

House Bill 3099

Sponsored by Representative SCHAUFLER

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**.

Prohibits court, in family abuse restraining order, from giving petitioner control of real or personal property in which respondent has financial interest and petitioner has no financial interest.

A BILL FOR AN ACT

1
2 Relating to family abuse restraining orders; creating new provisions; and amending ORS 107.105,
3 107.716, 107.718, 107.721, 107.725 and 107.730.

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

5 **SECTION 1.** ORS 107.718 is amended to read:

6 107.718. (1) When a person files a petition under ORS 107.710, the circuit court shall hold an
7 ex parte hearing in person or by telephone on the day the petition is filed or on the following judi-
8 cial day. Upon a showing that the petitioner has been the victim of abuse committed by the re-
9 spondent within 180 days preceding the filing of the petition, that there is an imminent danger of
10 further abuse to the petitioner and that the respondent represents a credible threat to the physical
11 safety of the petitioner or the petitioner's child, the court shall, if requested by the petitioner, order,
12 for a period of one year or until the order is withdrawn or amended, or until the order is superseded
13 as provided in ORS 107.722, whichever is sooner:

14 (a) That temporary custody of the children of the parties be awarded to the petitioner or, at the
15 request of the petitioner, to the respondent, subject to reasonable parenting time rights of the non-
16 custodial parent, which the court shall order, unless such parenting time is not in the best interest
17 of the child;

18 (b) That the respondent be required to move from the petitioner's residence, if in the sole name
19 of the petitioner or if it is jointly owned or rented by the petitioner and the respondent, or if the
20 parties are married to each other;

21 (c) That the respondent be restrained from entering, or attempting to enter, a reasonable area
22 surrounding the petitioner's current or subsequent residence if the respondent is required to move
23 from petitioner's residence;

24 (d) That a peace officer accompany the party who is leaving or has left the parties' residence
25 to remove essential personal effects of the party or the party's children, or both, including but not
26 limited to clothing, toiletries, diapers, medications, Social Security cards, birth certificates, identifi-
27 cation and tools of the trade;

28 (e) That the respondent be restrained from intimidating, molesting, interfering with or menacing
29 the petitioner, or attempting to intimidate, molest, interfere with or menace the petitioner;

30 (f) That the respondent be restrained from intimidating, molesting, interfering with or menacing
31 any children in the custody of the petitioner, or attempting to intimidate, molest, interfere with or

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 menace any children in the custody of the petitioner;

2 (g) That the respondent be restrained from entering, or attempting to enter, on any premises and
3 a reasonable area surrounding the premises when it appears to the court that such restraint is
4 necessary to prevent the respondent from intimidating, molesting, interfering with or menacing the
5 petitioner or children whose custody is awarded to the petitioner;

6 (h) Other relief that the court considers necessary to provide for the safety and welfare of the
7 petitioner and the children in the custody of the petitioner including, but not limited to, emergency
8 monetary assistance from the respondent; or

9 (i) That the respondent have no contact with the petitioner in person, by telephone or by mail
10 except as described in parenting time ordered under this section.

11 **(2) Notwithstanding subsection (1)(b) of this section, the court may not give the**
12 **petitioner control of real or personal property in which the respondent has a financial in-**
13 **terest and in which the petitioner has no financial interest.**

14 [(2)] (3) If respondent is restrained from entering, or attempting to enter, an area surrounding
15 petitioner’s residence or any other premises, the order restraining respondent shall specifically de-
16 scribe the area.

17 [(3)] (4) Imminent danger under this section includes but is not limited to situations in which
18 the respondent has recently threatened petitioner with additional bodily harm.

19 [(4)] (5) If the court awards parenting time to a parent who committed abuse, the court shall
20 make adequate provision for the safety of the child and of the petitioner. The order of the court
21 may include, but is not limited to, the following:

22 (a) That exchange of a child between parents shall occur at a protected location.

23 (b) That parenting time be supervised by another person or agency.

24 (c) That the perpetrator of the abuse be required to attend and complete, to the satisfaction of
25 the court, a program of intervention for perpetrators or any other counseling program designated
26 by the court as a condition of the parenting time.

27 (d) That the perpetrator of the abuse not possess or consume alcohol or controlled substances
28 during the parenting time and for 24 hours preceding the parenting time.

29 (e) That the perpetrator of the abuse pay all or a portion of the cost of supervised parenting
30 time, and any program designated by the court as a condition of parenting time.

31 (f) That no overnight parenting time occur.

32 [(5)] (6) An instruction brochure shall be available from the clerk of the circuit court explaining
33 the rights set forth under ORS 107.700 to 107.732. The petition, order and related forms shall be
34 available from the clerk of the court and shall be in substantially the following form:

35 _____

36 _____

37 IN THE CIRCUIT COURT OF
38 THE STATE OF OREGON FOR
39 THE COUNTY OF _____

40 _____,)

41 Petitioner) PETITION FOR
42 (your name)) RESTRAINING ORDER
43) TO PREVENT ABUSE

44 vs.)

45) No. _____

1)
2 _____,)
3 Respondent)
4 (person to be)
5 restrained))
6

7 YOU MUST PROVIDE COMPLETE AND TRUTHFUL INFORMATION. IF YOU DO NOT, THE
8 COURT MAY DISMISS ANY RESTRAINING ORDER AND MAY ALSO HOLD YOU IN CON-
9 TEMPT OF COURT.

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

13 ATTACH ADDITIONAL PAGES
14 IF NECESSARY.
15

16 I am the Petitioner and I state that the following information is true:
17

18 I am a resident of _____ County, Oregon.
19

20 Respondent is a resident of _____ County, Oregon.
21

22 I am _____ years of age and Respondent is _____ years of age.

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

24 — A. Respondent is my _____ spouse _____ former spouse. We were married on
25 _____, 2____. We were divorced on
26 _____, 2____.

27 — B. Respondent and I are adults related by blood, marriage or adoption. Respondent is my
28 _____ (type of relationship).

29 — C. Respondent and I have been living together since _____, 2____.

30 — D. Respondent and I lived together from _____, 2____, to _____,
31 2____.

32 — E. Respondent and I have been involved in a sexually intimate relationship within the last
33 two years.

34 — F. Respondent and I are the unmarried parents of a child.

35 — G. I am a minor and have been involved in a sexually intimate relationship with re-
36 spondent who is 18 years of age or older.

37 2. To qualify for a restraining order, respondent must have done one or more of the following:
38 Within the last 180 days, respondent has:

39 — A. Caused me bodily injury.

40 — B. Attempted to cause me bodily injury.

41 — C. Placed me in fear of imminent bodily injury.

42 — D. Caused me to engage in involuntary sexual relations by force or threat of force.

43 3. Any period of time after the abuse occurred during which respondent was incarcerated (in
44 jail or prison) or lived more than 100 miles from your home is not counted as part of the
45 180-day period, and you may still be eligible for a restraining order.

1 Respondent was incarcerated from _____, 2_____, to _____,
2 2_____.

3 Respondent lived more than 100 miles from my home from _____, 2_____, to
4 _____, 2_____.

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

7
8 Date and location of abuse:
9 _____
10 _____

11
12 How did respondent hurt or threaten you?
13 _____
14 _____
15 _____

16
17 5. Are there incidents other than those described in question 4 above, in which respondent has
18 hurt or threatened to hurt you? If Yes, Explain:

19 _____
20 _____
21 _____

22
23 6. I am in imminent danger of further abuse by respondent because:

24 _____
25 _____
26 _____

27
28 7. In any of the above incidents:

29
30 Were drugs, alcohol or weapons involved? Yes No

31 Did you need medical help? Yes No

32 Were the police or the courts involved? Yes No

33
34 If you have circled yes to any of the above questions, explain:

35 _____
36 _____

37
38 8. A. There (is) (is not) another restraining order pending between respondent and me. It is
39 filed in _____ (County), _____ (State), and I am (Petitioner) or (Respondent) in that
40 case.

41 The case number of the case is: _____

42 B. There (is) (is not) another lawsuit pending between respondent and me for divorce,
43 annulment, legal separation, filiation (paternity), custody, parenting time or visitation.

44 If yes, type of lawsuit: _____

45 It is filed in _____ (County), _____ (State).

1 C. If you and respondent are unmarried, has legal paternity of your children been estab-
2 lished? Yes No

3 In what way? Birth certificate
4 Child support proceeding
5 Paternity lawsuit
6 Other

7 Explain: _____

8 9. A. The children of respondent and me who are under 18 years of age are:

9 Name _____ Age ____

10 Name _____ Age ____

11 Name _____ Age ____

12 Name _____ Age ____

13 B. The children are now living with _____, at
14 _____ (address).

15 For how long? _____

16 C. I believe that I will need the assistance of a peace officer to regain custody of
17 my children from respondent. Yes No

18 D. Is there a custody or any other order now in effect concerning any of these
19 children? Yes No

20 Type of order: _____

21 The case number is: _____ and it is filed in _____ (County), _____ (State).

22 E. Where have the children listed in A. above lived for the last five years and with
23 whom?

	County/	Lived	Present
<u>Dates</u>	<u>State</u>	<u>With</u>	<u>Address</u>
24 From ___ to ___	_____	_____	_____
25 From ___ to ___	_____	_____	_____
26 From ___ to ___	_____	_____	_____
27 From ___ to ___	_____	_____	_____

31 F. I have not been involved as a party, witness or in any other capacity in any
32 other custody, parenting time or visitation lawsuits concerning the children in
33 this or any other state except:

34 _____
35 _____

37 G. I know of no other custody, parenting time or visitation lawsuits concerning the
38 children in this or any other state except:

39 _____

41 H. I know of no one, other than respondent, who has physical custody of the chil-
42 dren or who claims custody, parenting time or visitation rights with the chil-
43 dren, except:

44 _____

45

1 I. My children have not lived in Oregon for the last six months but my children
2 and I are now present in Oregon and I want the court to award me custody be-
3 cause (describe the emergency that makes this necessary or information that is
4 in Oregon that relates to the children):
5 _____
6

7 10. Respondent may be required to move from your residence if it is in your sole name,
8 or if it is jointly owned or rented by you and respondent, or if you and respondent are
9 married.

10 I (do) (do not) want respondent to move from my residence.

11 My residence is:

12 Owned Leased Rented

13 By: _____
14

15 PETITIONER ASKS THE COURT TO GRANT THE RELIEF INDICATED IN THE "PETITIONER'S
16 REQUEST" COLUMN OF THE PROPOSED RESTRAINING ORDER, WHICH IS ATTACHED.
17 _____
18

19 PETITIONER MUST NOTIFY THE COURT
20 OF ANY CHANGE OF ADDRESS.
21

22 ALL NOTICES OF HEARING WILL
23 BE SENT TO THIS ADDRESS
24 AND DISMISSALS MAY BE
25 ENTERED IF YOU DO NOT APPEAR
26 AT A SCHEDULED HEARING.
27

28 If you wish to have your residential address or telephone number withheld from
29 respondent, use a contact address and telephone number so the Court and the
30 Sheriff can reach you if necessary.
31

32 _____
33 PETITIONER

34 STATE OF OREGON)

35) ss.

36 County of _____)
37

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

39 _____
40 NOTARY PUBLIC FOR OREGON

41 My Commission Expires: _____
42

43 RELEVANT DATA

44 RESPONDENT _____

45 Sex _____ Telephone # _____

1 Residence Address _____
2 City/State/Zip _____
3 County _____
4 Birthdate _____ Age _____
5 Race _____
6 Height _____ Weight _____
7 Eye Color _____

8
9 PETITIONER (you) _____
10 Sex _____ *Telephone # _____
11 *Residence Address _____
12 City/State/Zip _____
13 County _____
14 Birthdate _____ Age _____
15 Race _____
16 Height _____ Weight _____
17 Eye Color _____

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

21
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PLEASE FILL OUT THIS INFORMATION
TO AID IN SERVICE OF
THE RESTRAINING ORDER

26 Where is respondent most likely to be located?

27 Residence Hours _____
28 Employment Hours _____
29 Address: _____
30 _____
31 Employment Hours _____
32 Address: _____
33 _____

34

35 Description of vehicle _____

36

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

38 _____
39 _____
40 _____

41

42

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

44 _____

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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) RESTRAINING ORDER
(your name)) TO PREVENT ABUSE

)
vs.)
) 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. THIS ORDER IS ENFORCEABLE IN EVERY STATE. 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

- 1. Petitioner and respondent are related as follows (check all that apply):
- A. Petitioner and respondent are spouses. _____
- B. Petitioner and respondent are former spouses. _____
- C. Petitioner and respondent are adult persons related by blood, marriage or adoption. _____
- D. Petitioner and respondent are cohabiting or have cohabited with each other. _____
- E. Petitioner and respondent have been involved in a sexually intimate relationship with each other within the last two years. _____
- F. Petitioner and respondent are unmarried parents of a child. _____
- G. Petitioner is a minor and has been involved in a sexually _____

- 1 intimate relationship with respondent who is 18 years of age or older.
- 2 2. Additional findings:
- 3 A. Petitioner has been abused by respondent as defined by ORS 107.705. _____
- 4 B. The abuse of petitioner by respondent occurred within the last _____
- 5 180 days as provided in ORS 107.710.
- 6 C. Respondent represents a credible threat to the physical safety _____
- 7 of petitioner or petitioner’s child and there is an imminent danger of _____
- 8 further abuse to petitioner.
- 9 D. If there are children, Oregon has jurisdiction over the issue of the _____
- 10 custody of the children under ORS 109.701 to 109.834 on the _____
- 11 following grounds:
- 12 a. Oregon is the home state of the child on the date this proceeding _____
- 13 was commenced; or _____
- 14 Oregon was the home state within six months before this proceeding _____
- 15 was commenced and the child is absent from the state, but a parent _____
- 16 or person acting as a parent continues to live in Oregon under _____
- 17 ORS 109.741 (1)(a).
- 18 b. No other state has home state jurisdiction under ORS 109.741 _____
- 19 (1)(a); or _____
- 20 The home state of the child _____ (name) _____
- 21 has declined jurisdiction and the child’s parents have, or one of _____
- 22 the child’s parents or a person acting as a parent has, a significant _____
- 23 connection with Oregon and substantial evidence is available here _____
- 24 concerning the child’s care, protection, training and personal _____
- 25 relationships under ORS 109.741 (1)(b).
- 26 c. All courts having jurisdiction under home state grounds under _____
- 27 ORS 109.741 (1)(a), or significant connections grounds under ORS 109.741 _____
- 28 (1)(b), have declined to exercise jurisdiction under ORS 109.741 (1)(c).
- 29 d. No court of any other state has jurisdiction under ORS 109.741 _____
- 30 (1)(a), (b) or (c).
- 31 e. Emergency grounds exist for the exercise of temporary emergency _____
- 32 jurisdiction because the child is present in this state and has _____
- 33 been abandoned; or _____
- 34 Emergency grounds exist for the exercise of temporary emergency _____
- 35 jurisdiction because it is necessary to protect the child because the _____
- 36 child, or a sibling or parent of the child, is subjected to or threatened _____
- 37 with mistreatment or abuse under ORS 109.751.
- 38 f. Because a previous child custody, parenting time, guardianship _____
- 39 or juvenile dependency determination has been made in _____
- 40 _____ (State/Tribe/Country), the custody _____
- 41 and parenting time provisions in this order remain in effect for _____
- 42 one year or until _____ (State/Tribe/Country) _____
- 43 issues an order, whichever occurs first;
- 44 Because a child custody, parenting time, guardianship or juvenile _____
- 45 dependency proceeding has been commenced in _____

1 (State/Tribe/Country), the custody and parenting time provisions
 2 in this order remain in effect for one year or until
 3 _____ (State/Tribe/Country) issues an order,
 4 whichever occurs first; or
 5 No child custody, parenting time, guardianship or juvenile dependency _____
 6 determination has been issued or proceeding commenced in another
 7 state, tribe or country having jurisdiction under ORS 109.701 to
 8 109.834. The custody and parenting time provisions in this order
 9 shall become a final determination for purposes of ORS 109.701 to
 10 109.834 if Oregon becomes the home state of the child.

11
12 IT IS HEREBY ORDERED that:

	<u>Petitioner's Request</u>	<u>Judge's Initials</u>
--	-----------------------------	-------------------------

14	[] 1. Respondent is restrained (prohibited) from intimidating, 15 molesting, interfering with or menacing petitioner, or 16 attempting to intimidate, molest, interfere with 17 or menace petitioner.	_____
----	---	-------

18	[] 2. Respondent is restrained (prohibited) from intimidating, 19 molesting, interfering with or menacing any minor children in 20 petitioner's custody, or attempting to intimidate, molest, 21 interfere with or menace any minor children 22 in petitioner's custody:	_____
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23 _____
 24 _____

26	[] 3. Respondent is restrained (prohibited) from entering, or 27 attempting to enter:	_____
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28 (Include names and address unless withheld for safety reasons.)

29	[] Petitioner's current or subsequent residence.	_____
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30	[] Petitioner's business or place of employment.	_____
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31	[] Petitioner's school.	_____
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32	[] Other locations.	_____
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33	[] The area surrounding petitioner's current 34 or subsequent residence or petitioner's 35 school, business, place of employment 36 or other named premises described as 37 follows (specifically describe area):	_____
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38 _____
 39 _____

41	[] 4. Respondent is restrained (prohibited) from:	_____
----	--	-------

42	[] Contacting, or attempting to contact, petitioner by telephone.	_____
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43	[] Contacting, or attempting to contact, petitioner by mail.	_____
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44	[] 5. Respondent is restrained (prohibited) from entering, or 45 attempting to enter:	_____
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1 as set forth below:

2 Petitioner's Request Judge's Initials

3 [] 12. NO PARENTING TIME due to _____
4 _____
5 _____

6
7 [] 13. SUPERVISED PARENTING TIME: Three hours per week, _____
8 Supervised by:
9 As follows:
10 (day of week, location, times)

11 [] 14. Once per week on _____ (day) from _____
12 a.m./p.m. to _____ a.m./p.m.

13 [] 15. On the FIRST and THIRD weekends of each month _____
14 from 7:00 p.m. Saturday to 7:00 p.m. Sunday.
15 The first weekend is the one in which both
16 Saturday and Sunday are in the new month.

17 [] 16. On the FIRST and THIRD weekends of each month _____
18 from 7:00 p.m. Friday to 7:00 p.m. Sunday.
19 The first weekend is the one in which both
20 Saturday and Sunday are in the new month.

21 [] 17. OTHER PARENTING TIME AS FOLLOWS: _____
22 _____
23 _____

24
25 [] 18. Parenting time details not provided for in this ORDER, _____
26 including the days or hours of parenting time, shall be
27 arranged through _____.

28 [] 19. The parent not awarded custody will pick up and return _____
29 the children at the curb, or driveway if no curb, of the
30 residence of the custodial parent or at _____
31 (name and address of different location) no more than
32 15 minutes early nor 15 minutes late.
33 IF RESPONDENT IS NOT AWARDED CUSTODY AND
34 IF RESPONDENT IS OTHERWISE PROHIBITED
35 FROM BEING AT PETITIONER'S RESIDENCE,
36 RESPONDENT MAY BE AT THE CURB, OR DRIVE-
37 WAY IF NO CURB, OF PETITIONER'S RESIDENCE
38 FOR A MAXIMUM OF FIVE MINUTES AT THE
39 PARENTING TIME HOUR SPECIFIED IN THE ORDER
40 TO PICK UP OR RETURN THE CHILDREN OR AT ANY
41 OTHER TIME THE PARTIES AGREE TO.

42 [] 20. No further service is necessary because respondent _____
43 appeared in person before the Court.

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45 IT IS FURTHER ORDERED that:

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

Other Amount (\$)

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

DATED this _____ day of _____, 2_____.

CIRCUIT COURT JUDGE (signature)

CIRCUIT COURT JUDGE (printed)

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

_____)
_____) 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 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: _____

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

_____,)
Petitioner,) No. _____
vs.) MOTION AND ORDER
_____,) OF DISMISSAL
Respondent.)
_____)

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

Petitioner

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

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

IT IS SO ORDERED this _____ day of _____, 2_____.

JUDGE

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

_____,)
(D.O.B. _____)) NOTICE TO RESPONDENT
(Family Abuse
Petitioner,) Prevention Act)
and) No. _____
_____,)
(D.O.B. _____))
Respondent.)

THIS FORM MUST BE
ATTACHED TO SERVICE COPY

OF RESTRAINING ORDER

1
2
3 TO RESPONDENT: A RESTRAINING ORDER HAS BEEN ISSUED BY THE COURT WHICH AF-
4 FECTS YOUR RIGHTS AND IS NOW IN EFFECT. THIS ORDER BECOMES EFFECTIVE IMME-
5 DIATELY. IF YOU WISH TO CONTEST THE CONTINUATION OF THIS ORDER, YOU MUST
6 COMPLETE THIS FORM AND MAIL OR DELIVER IT TO:

7
8
9 REQUESTS FOR HEARING MUST BE MADE WITHIN 30 DAYS AFTER YOU RECEIVE THE
10 ORDER. YOU MUST INCLUDE YOUR ADDRESS AND TELEPHONE NUMBER WITH YOUR
11 REQUEST FOR A HEARING. THE HEARING WILL BE HELD WITHIN 21 DAYS, OR WITHIN
12 FIVE DAYS IF YOU ARE CONTESTING A CUSTODY PROVISION (NOT PARENTING TIME).
13 AT THE HEARING, A JUDGE WILL DECIDE WHETHER THE ORDER SHOULD BE CANCELED,
14 CHANGED OR EXTENDED. THE ONLY PURPOSE OF THIS HEARING WILL BE TO DETER-
15 MINE IF THE TERMS OF THE COURT'S ORDER SHOULD BE CANCELED, CHANGED OR EX-
16 TENDED.

17
18 IF YOU DO NOT REQUEST A HEARING WITHIN THE TIME ALLOWED BY LAW, THIS RE-
19 STRAINING ORDER WILL BE CONFIRMED BY OPERATION OF LAW. THAT MEANS THAT
20 THIS RESTRAINING ORDER WILL CONTINUE IN EFFECT AS ISSUED BECAUSE YOU HAVE
21 BEEN GIVEN BUT HAVE NOT EXERCISED YOUR RIGHTS TO REQUEST AND PARTICIPATE
22 IN A HEARING. OREGON LAW CONSIDERS THIS CONFIRMATION SUFFICIENT TO MEET
23 THE REQUIREMENTS OF FEDERAL LAW THAT MAY PROHIBIT YOU FROM POSSESSING A
24 FIREARM OR FIREARM AMMUNITION WHILE THIS RESTRAINING ORDER IS IN EFFECT.

25
26 KEEP IN MIND THAT THE RESTRAINING ORDER YOU HAVE RECEIVED IS IN EFFECT AND
27 REMAINS IN EFFECT UNTIL THE COURT THAT ISSUED THE ORDER MODIFIES IT OR DIS-
28 MISSES IT OR UNTIL IT EXPIRES. THE ORDER MAY ALSO BE RENEWED UPON A FINDING
29 THAT A PERSON IN THE PETITIONER'S SITUATION WOULD REASONABLY FEAR FURTHER
30 ACTS OF ABUSE BY YOU IF THE ORDER IS NOT RENEWED. IF YOU ARE ARRESTED FOR
31 VIOLATING THIS ORDER, THE SECURITY AMOUNT (BAIL) IS \$5,000, UNLESS A DIFFERENT
32 AMOUNT IS ORDERED BY THE COURT.

33
34 This restraining order, or any order continuing or changing this order, is enforceable in every
35 county in Oregon. It is also enforceable in all 50 states, the District of Columbia, tribal lands and
36 territories of the United States.

37 Violation of this restraining order, or any order continuing or changing this order, constitutes
38 contempt of court, punishable by a fine of up to \$500 or one percent of your annual gross income,
39 whichever is greater, or a jail term of up to six months, or both. Other sanctions may also be im-
40 posed for contempt.

41 While this order, or any order continuing or changing this order, is in effect, federal law may
42 prohibit you from:

43 Traveling across state lines or tribal land lines with the intent to violate this order and then
44 violating this order.

45 Causing the petitioner to cross state lines or tribal land lines for your purpose of violating the

1 order.

2 Possessing, receiving, shipping or transporting any firearm or firearm ammunition.

3 Whether or not a restraining order is in effect, federal law may prohibit you from:

4 Traveling across state lines or tribal land lines with the intent to injure the petitioner and then
5 intentionally committing a crime of violence causing bodily injury to the petitioner.

6 Causing the petitioner to travel across state lines or tribal land lines if your intent is to cause
7 bodily injury to the petitioner or if the travel results in your causing bodily injury to the petitioner.

8

9

10 REQUEST FOR HEARING

11

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

14 ___ The order restraining me from contacting or attempting to contact the petitioner.

15 ___ The order granting child custody to the petitioner.

16 ___ The terms of the parenting time order.

17 ___ Other _____

18

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

20

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

22

23 Date: _____

24

25 SIGNATURE OF RESPONDENT

26

27

28 ADDRESS

29

30 TELEPHONE NUMBER

31

32

33 [(6)] (7) If the court orders relief:

34 (a) The clerk of the court shall provide without charge the number of certified true copies of
35 the petition and order necessary to provide the petitioner with one copy and to effect service and
36 shall have a true copy of the petition and order delivered to the county sheriff for service upon the
37 respondent, unless the court finds that further service is unnecessary because the respondent ap-
38 peared in person before the court. In addition and upon request by the petitioner, the clerk shall
39 provide the petitioner, without charge, two exemplified copies of the petition and order.

40 (b) The county sheriff shall serve the respondent personally unless the petitioner elects to have
41 the respondent served personally by a private party or by a peace officer who is called to the scene
42 of a domestic disturbance at which the respondent is present, and who is able to obtain a copy of
43 the order within a reasonable amount of time. Proof of service shall be made in accordance with
44 ORS 107.720. When the order does not contain the respondent's date of birth and service is effected
45 by the sheriff or other peace officer, the sheriff or officer shall verify the respondent's date of birth

1 with the respondent and shall record that date on the order or proof of service entered into the Law
 2 Enforcement Data System under ORS 107.720.

3 (c) No filing fee, service fee or hearing fee shall be charged for proceedings seeking only the
 4 relief provided under ORS 107.700 to 107.732.

5 [(7)] (8) If the county sheriff:

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

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

14 [(8)(a)] (9)(a) Within 30 days after a restraining order is served under this section, the re-
 15 spondent therein may request a court hearing upon any relief granted. The hearing request form
 16 shall be available from the clerk of the court and shall be in substantially the form provided in
 17 subsection [(5)] (6) of this section.

18 (b) If the respondent requests a hearing under paragraph (a) of this subsection, the clerk of the
 19 court shall notify the petitioner of the date and time of such hearing, and shall supply the petitioner
 20 with a copy of the respondent's request for a hearing. The petitioner shall give to the clerk of the
 21 court information sufficient to allow such notification.

22 (c) The hearing shall not be limited to the issues raised in the respondent's request for hearing
 23 form. If the respondent seeks to raise an issue at the hearing not previously raised in the request
 24 for hearing form, or if the petitioner seeks relief at the hearing not granted in the original order,
 25 the other party shall be entitled to a reasonable continuance for the purpose of preparing a response
 26 to the issue.

27 [(9)] (10) If the respondent fails to request a hearing within 30 days after a restraining order is
 28 served, the restraining order is confirmed by operation of law. The provisions of this section are
 29 sufficient to meet the due process requirements of 18 U.S.C. 922(g) in that the respondent received
 30 actual notice of the right to request a hearing and the opportunity to participate at the hearing but
 31 the respondent failed to exercise those rights.

32 **SECTION 2. The amendments to ORS 107.718 by section 1 of this 2005 Act apply only to**
 33 **restraining orders entered on or after the effective date of this 2005 Act.**

34 **SECTION 3.** ORS 107.105 is amended to read:

35 107.105. (1) Whenever the court renders a judgment of marital annulment, dissolution or sepa-
 36 ration, the court may provide in the judgment:

37 (a) For the future care and custody, by one party or jointly, of all minor children of the parties
 38 born, adopted or conceived during the marriage, and for minor children born to the parties prior to
 39 the marriage, as the court may deem just and proper under ORS 107.137. The court may hold a
 40 hearing to decide the custody issue prior to any other issues. When appropriate, the court shall
 41 recognize the value of close contact with both parents and encourage joint parental custody and
 42 joint responsibility for the welfare of the children.

43 (b) For parenting time rights of the parent not having custody of such children, and for
 44 visitation rights pursuant to a petition filed under ORS 109.119. When a parenting plan has been
 45 developed as required by ORS 107.102, the court shall review the parenting plan and, if approved,

1 incorporate the parenting plan into the court's final order. When incorporated into a final order, the
2 parenting plan is determinative of parenting time rights. If the parents have been unable to develop
3 a parenting plan or if either of the parents requests the court to develop a detailed parenting plan,
4 the court shall develop the parenting plan in the best interest of the child, ensuring the noncustodial
5 parent sufficient access to the child to provide for appropriate quality parenting time and assuring
6 the safety of the parties, if implicated. The court may deny parenting time to the noncustodial par-
7 ent under this subsection only if the court finds that parenting time would endanger the health or
8 safety of the child. The court shall recognize the value of close contact with both parents and en-
9 courage, when practicable, joint responsibility for the welfare of such children and extensive contact
10 between the minor children of the divided marriage and the parties. If the court awards parenting
11 time to a noncustodial parent who has committed abuse, the court shall make adequate provision for
12 the safety of the child and the other parent in accordance with the provisions of ORS 107.718 [(4)]
13 (5).

14 (c) For the support of the children of the marriage by the parties. In ordering child support, the
15 formula established by ORS 25.270 to 25.287 shall apply. The court may at any time require an ac-
16 counting from the custodial parent with reference to the use of the money received as child support.
17 The court is not required to order support for any minor child who has become self-supporting,
18 emancipated or married, or who has ceased to attend school after becoming 18 years of age.

19 (d) For spousal support, an amount of money for a period of time as may be just and equitable
20 for one party to contribute to the other, in gross or in installments or both. The court may approve
21 an agreement for the entry of an order for the support of a party. In making the spousal support
22 order, the court shall designate one or more categories of spousal support and shall make findings
23 of the relevant factors in the decision. The court may order:

24 (A) Transitional spousal support as needed for a party to attain education and training neces-
25 sary to allow the party to prepare for reentry into the job market or for advancement therein. The
26 factors to be considered by the court in awarding transitional spousal support include but are not
27 limited to:

- 28 (i) The duration of the marriage;
- 29 (ii) A party's training and employment skills;
- 30 (iii) A party's work experience;
- 31 (iv) The financial needs and resources of each party;
- 32 (v) The tax consequences to each party;
- 33 (vi) A party's custodial and child support responsibilities; and
- 34 (vii) Any other factors the court deems just and equitable.

35 (B) Compensatory spousal support when there has been a significant financial or other contri-
36 bution by one party to the education, training, vocational skills, career or earning capacity of the
37 other party and when an order for compensatory spousal support is otherwise just and equitable in
38 all of the circumstances. The factors to be considered by the court in awarding compensatory
39 spousal support include but are not limited to:

- 40 (i) The amount, duration and nature of the contribution;
- 41 (ii) The duration of the marriage;
- 42 (iii) The relative earning capacity of the parties;
- 43 (iv) The extent to which the marital estate has already benefited from the contribution;
- 44 (v) The tax consequences to each party; and
- 45 (vi) Any other factors the court deems just and equitable.

1 (C) Spousal maintenance as a contribution by one spouse to the support of the other for either
2 a specified or an indefinite period. The factors to be considered by the court in awarding spousal
3 maintenance include but are not limited to:

4 (i) The duration of the marriage;

5 (ii) The age of the parties;

6 (iii) The health of the parties, including their physical, mental and emotional condition;

7 (iv) The standard of living established during the marriage;

8 (v) The relative income and earning capacity of the parties, recognizing that the wage earner's
9 continuing income may be a basis for support distinct from the income that the supported spouse
10 may receive from the distribution of marital property;

11 (vi) A party's training and employment skills;

12 (vii) A party's work experience;

13 (viii) The financial needs and resources of each party;

14 (ix) The tax consequences to each party;

15 (x) A party's custodial and child support responsibilities; and

16 (xi) Any other factors the court deems just and equitable.

17 (e) For the delivery to one party of such party's personal property in the possession or control
18 of the other at the time of the giving of the judgment.

19 (f) For the division or other disposition between the parties of the real or personal property, or
20 both, of either or both of the parties as may be just and proper in all the circumstances. A retire-
21 ment plan or pension or an interest therein shall be considered as property. The court shall consider
22 the contribution of a spouse as a homemaker as a contribution to the acquisition of marital assets.
23 There is a rebuttable presumption that both spouses have contributed equally to the acquisition of
24 property during the marriage, whether such property is jointly or separately held. Subsequent to the
25 filing of a petition for annulment or dissolution of marriage or separation, the rights of the parties
26 in the marital assets shall be considered a species of coownership, and a transfer of marital assets
27 under a judgment of annulment or dissolution of marriage or of separation entered on or after Oc-
28 tober 4, 1977, shall be considered a partitioning of jointly owned property. The court shall require
29 full disclosure of all assets by the parties in arriving at a just property division. In arriving at a
30 just and proper division of property, the court shall consider reasonable costs of sale of assets, taxes
31 and any other costs reasonably anticipated by the parties. If a spouse has been awarded spousal
32 support in lieu of a share of property, the court shall so state on the record, and shall order the
33 obligor to provide for and maintain life insurance in an amount commensurate with the obligation
34 and designating the obligee as beneficiary for the duration of the obligation. If the obligor dies prior
35 to the termination of such support and such insurance is not in force, the court may modify the
36 method of payment of spousal support under the judgment or order of support from installments to
37 a lump sum payment to the obligee from the estate of the obligor in an amount commensurate with
38 the present value of the spousal support at the time of death. The obligee or attorney of the obligee
39 shall cause a certified copy of the judgment to be delivered to the life insurance company or com-
40 panies. If the obligee or the attorney of the obligee delivers a true copy of the judgment to the life
41 insurance company or companies, identifying the policies involved and requesting such notification
42 under this section, the company or companies shall notify the obligee, as beneficiary of the insur-
43 ance policy, whenever the policyholder takes any action that will change the beneficiary or reduce
44 the benefits of the policy. Either party may request notification by the insurer when premium
45 payments have not been made. If the obligor is ordered to provide for and maintain life insurance,

1 the obligor shall provide to the obligee a true copy of the policy. The obligor shall also provide to
2 the obligee written notice of any action that will reduce the benefits or change the designation of
3 the beneficiaries under the policy.

4 (g) For the creation of trusts as follows:

5 (A) For the appointment of one or more trustees to hold, control and manage for the benefit of
6 the children of the parties, of the marriage or otherwise, such of the real or personal property of
7 either or both of the parties, as the court may order to be allocated or appropriated to their support
8 and welfare; and to collect, receive, expend, manage or invest any sum of money awarded for the
9 support and welfare of minor children of the parties.

10 (B) For the appointment of one or more trustees to hold, manage and control such amount of
11 money or such real or personal property of either or both of the parties, as may be set aside, allo-
12 cated or appropriated for the support of a party.

13 (C) For the establishment of the terms of the trust and provisions for the disposition or distrib-
14 ution of such money or property to or between the parties, their successors, heirs and assigns after
15 the purpose of the trust has been accomplished. Upon petition of a party or a person having an in-
16 terest in the trust showing a change of circumstances warranting a change in the terms of the trust,
17 the court may make and direct reasonable modifications in its terms.

18 (h) To change the name of either spouse to a name the spouse held before the marriage. The
19 court shall order a change if it is requested by the affected party.

20 (i) For a money award for any sums of money found to be then remaining unpaid upon any order
21 or limited judgment entered under ORS 107.095. If a limited judgment was entered under ORS
22 107.095, the limited judgment shall continue to be enforceable for any amounts not paid under the
23 limited judgment unless those amounts are included in the money award made by the general judg-
24 ment.

25 (j) For an award of reasonable attorney fees in favor of a party or in favor of a party's attorney.

26 (2) In determining the proper amount of support and the proper division of property under sub-
27 section (1)(c), (d) and (f) of this section, the court may consider evidence of the tax consequences
28 on the parties of its proposed judgment.

29 (3) Upon the filing of the judgment, the property division ordered shall be deemed effective for
30 all purposes. This transfer by judgment, which shall effect solely owned property transferred to the
31 other spouse as well as commonly owned property in the same manner as would a declaration of a
32 resulting trust in favor of the spouse to whom the property is awarded, shall not be deemed a tax-
33 able sale or exchange.

34 (4) If an appeal is taken from a judgment of annulment or dissolution of marriage or of separa-
35 tion or from any part of a judgment rendered in pursuance of the provisions of ORS 107.005 to
36 107.086, 107.095, 107.105, 107.115 to 107.174, 107.405, 107.425, 107.445 to 107.520, 107.540 and 107.610,
37 the court rendering the judgment may provide in a supplemental judgment for any relief provided
38 for in ORS 107.095 and shall provide that the relief granted in the judgment is to be in effect only
39 during the pendency of the appeal. A supplemental judgment under this subsection may be enforced
40 as provided in ORS 33.015 to 33.155 and ORS chapter 18. A supplemental judgment under this sub-
41 section may be appealed in the same manner as provided for supplemental judgments modifying a
42 domestic relations judgment under ORS 19.275.

43 (5) If an appeal is taken from the judgment or other appealable order in a suit for annulment
44 or dissolution of a marriage or for separation, and the appellate court awards costs and disburse-
45 ments to a party, it may also award to that party, as part of the costs, such additional sum of money

1 as it may adjudge reasonable as an attorney fee on the appeal.

2 (6) If, as a result of a suit for the annulment or dissolution of a marriage or for separation, the
 3 parties to such suit become owners of an undivided interest in any real or personal property, or
 4 both, either party may maintain supplemental proceedings by filing a petition in such suit for the
 5 partition of such real or personal property, or both, within two years from the entry of the judgment,
 6 showing among other things that the original parties to the judgment and their joint or several
 7 creditors having a lien upon any such real or personal property, if any there be, constitute the sole
 8 and only necessary parties to such supplemental proceedings. The procedure in the supplemental
 9 proceedings, so far as applicable, shall be the procedure provided in ORS 105.405, for the partition
 10 of real property, and the court granting the judgment shall have in the first instance and retain
 11 jurisdiction in equity therefor.

12 **SECTION 4.** ORS 107.716 is amended to read:

13 107.716. (1) If the respondent requests a hearing pursuant to ORS 107.718 [(8)], the court shall
 14 hold the hearing within 21 days following the request, and may cancel or change any order issued
 15 under ORS 107.718.

16 (2) In addition to the relief available under ORS 107.718, the court, in a hearing held pursuant
 17 to subsection (1) of this section, may assess against either party a reasonable attorney fee and such
 18 costs as may be incurred in the proceeding.

19 (3) Where temporary custody is contested, the hearing shall be held within five days of the re-
 20 spondent's request. If the respondent is represented by an attorney, time for the hearing may be
 21 extended for up to five days at the request of the petitioner so that the petitioner may seek repre-
 22 sentation.

23 (4) If the court continues the order, with or without changes, at a hearing about which the re-
 24 spondent received actual notice and the opportunity to participate, the court shall include in the
 25 order a certificate in substantially the following form in a separate section immediately above the
 26 signature of the judge:

27
 28
 29 **CERTIFICATE OF COMPLIANCE**
 30 **WITH THE VIOLENCE**
 31 **AGAINST WOMEN ACT**
 32

33 This protective order meets all full faith and credit requirements of the Violence Against Women
 34 Act, 18 U.S.C. 2265 (1994). This court has jurisdiction over the parties and the subject matter. The
 35 respondent was afforded notice and timely opportunity to be heard as provided by the law of this
 36 jurisdiction. This order is valid and entitled to enforcement in this and all other jurisdictions.
 37

38
 39 (5) The court shall have the further power to approve any consent agreement to bring about a
 40 cessation of abuse of the parties. However, the court may not approve a term in a consent agree-
 41 ment that provides for restraint of a party to the agreement unless the other party petitioned for
 42 and was granted an order under ORS 107.710. An order or consent agreement made under this sec-
 43 tion may be amended at any time and shall continue in effect for a period of one year from the date
 44 of the order issued under ORS 107.718, or until superseded as provided in ORS 107.722.

45 (6) No order or agreement made under ORS 107.705 to 107.720, 133.310 and 133.381 shall in any

1 manner affect title to any real property.

2 (7) No undertaking shall be required in any proceeding under ORS 107.700 to 107.732.

3 (8) Any proceeding under ORS 107.700 to 107.732 shall be in addition to any other available civil
4 or criminal remedies.

5 **SECTION 5.** ORS 107.721 is amended to read:

6 107.721. If the court does not award parenting time under ORS 107.718 to the parent who com-
7 mitted abuse, the petitioner may move to a residence more than 60 miles from the other parent
8 without giving notice to the other parent of the change of residence. However, the petitioner shall
9 give to the clerk of the court information sufficient to allow notification under ORS 107.718 [(8)]
10 **(9)**.

11 **SECTION 6.** ORS 107.725 is amended to read:

12 107.725. The court may renew an order entered under ORS 107.716 or 107.718 upon a finding
13 that a person in the petitioner’s situation would reasonably fear further acts of abuse by the re-
14 spondent if the order is not renewed. A finding that there has been a further act of abuse is not
15 required. A court may renew an order on the basis of a sworn, ex parte petition alleging facts sup-
16 porting the required finding. If the renewal order is granted, the provisions of ORS 107.716 (4) and
17 107.718 [(6) to (8)] **(7) to (9)** apply except that the court may hear no issue other than the basis for
18 renewal unless requested in the hearing request form and thereafter agreed to by the petitioner. The
19 court shall hold a hearing required under this section within 21 days after the respondent’s request.

20 **SECTION 7.** ORS 107.730 is amended to read:

21 107.730. (1) At any time after an order has been issued under ORS 107.700 to 107.732 and after
22 the time period set forth in ORS 107.718 [(8)(a)] **(9)(a)**, a party may request that the court modify
23 terms in the order that provide for custody and parenting time.

24 (2) The clerk of the court shall provide without charge the number of certified true copies of
25 the request for modification of the order and notice of hearing necessary to effect service and, at
26 the election of the party requesting the modification, shall have a true copy of the request and no-
27 tice delivered to the county sheriff for service upon the other party.

28 (3) Service shall be in the manner provided by law for service of summons. The county sheriff
29 shall serve the other party personally unless the party requesting the modification elects to have
30 the other party served personally by a private party.

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

32