

Comparison Chart of Protective Orders in Oregon

Current as of September 2021

	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
	Family Abuse Prevention Act Restraining Order, ORS §107.700 – 735	Elderly Persons and Persons with Disabilities Abuse Prevention Act Restraining Order, ORS §124.005 – 040	Sexual Abuse Protective Order, ORS §163.760 – 777	Stalking Protective Order, ORS §163.730 – 755 (criminal and civil citation route) & ORS §30.866 (civil petition route)	Extreme Risk Protection Order, ORS §166.525 – 543	Emergency Protective Order, ORS §133.035
ELIGIBILITY						
Relationship between petitioner and respondent	Respondent must be petitioner’s “ family or household member, ” which is defined as: <ul style="list-style-type: none"> • Spouse / former spouse • Adults related by blood, adoption, or marriage • Person who is cohabitating or formerly cohabitated with petitioner (cohabitate implies sexual relationship) • Former sexual partner (within last 2 years) • Parent of petitioner’s child (ORS 107.705(4)) 	Petitioner and respondent do not have to have a particular relationship. However, the respondent cannot be the person’s guardian or conservator (ORS 124.010(1)(c),(8)). Petitioner must be: 65 years or older, OR Person with a disability Guardian or guardian ad litem for an elderly person or person with a disability (ORS 124.010(1))	Adult petitioners -- respondent <i>cannot</i> be a household or family member as defined by FAPA statute. (ORS 163.763(a); ORS 163.760(1); ORS 107.705) Minor petitioners —can obtain a SAPO against a family member or intimate partner in limited situations (ORS 163.763(1)(a); ORS 107.705).	Petitioner and respondent do not have to have a particular relationship (See ORS 30.866 generally)	Petitioner must be either: <ul style="list-style-type: none"> • Law enforcement officer (OSP, Sheriff, city police, tribal police; not campus security), or • Family or household member, which is defined as: <ul style="list-style-type: none"> ○ Spouse ○ Intimate partner ○ Parent, sibling, or child of respondent ○ Any person living in the same household as respondent. (ORS 166.525(2); ORS 166.527(1)) 	Respondent must be “family or household member” as defined in FAPA. (see first column) (ORS 133.035(1)(a)(B), ORS 107.705(4)) NOTE: peace officer applies for order on behalf of the victim of abuse. The parties are the “protected person” and the respondent. (ORS 133.035(1))
Does petitioner have to be over 18 to apply?	Minors may obtain a FAPA in limited circumstances. The respondent must be over 18 and must be petitioner’s: Spouse / former spouse	No, but minor petitioner would require a guardian ad litem (ORCP 27B).	A person 12 years or older may petition court for a restraining order. If younger than 12, petitioner must apply through a parent, guardian, or guardian	No, but minor petitioner would require a guardian ad litem (ORCP 27B). A parent or guardian can also present a complaint for a stalking	No, but minor petitioner would require a guardian ad litem (ORCP 27B).	N/A, peace officer responding to a domestic violence incident applies. (ORS 133.035(1)) However, the protected

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	Person with whom they have been involved in a sexually intimate relationship at any point in time (no 2-year limit) (ORS 107.726)		ad litem (ORS 163.763(2)(a)).	citation to protect a minor or dependent person. (ORS 163.744(3)).		person may be a minor in certain circumstances
Does the respondent have to be over 18?	Yes (ORS 107.726(2)).	Unclear. Nothing in the EPPDAPA statute prohibits the action but see ORS 419B.100(1)(c) re exclusive jurisdiction of Juvenile Court over minor whose condition or circumstances endanger self or others. If filed against a minor respondent, a guardian ad litem is required (ORCP 27B).	Yes (ORS 163.763(1)(b)).	No; In addition the Court <i>may</i> enter an order against a minor respondent without a GAL (ORS 30.866(5)).	Unclear. Nothing in the ERPO statute prohibits the action but see ORS 419B.100(1)(c) re exclusive jurisdiction of Juvenile Court over minor whose condition or circumstances endanger self or others. If filed against a minor respondent, a guardian ad litem is required (ORCP 27B).	The Respondent may be a minor in certain circumstances
Types of abuse that qualify petitioner for the order	Attempting to cause or intentionally, knowingly, or recklessly causing bodily injury Intentionally, knowingly, or recklessly placing the petitioner in fear of imminent bodily injury Causing petitioner to engage in sexual relations by force or	Physical injury caused by non-accidental means or at variance with given explanation Neglect leading to physical harm Abandonment by a person who owes duties of care to an elderly person or person with disability Willful infliction of	Sexual abuse, which means sexual contact with: A person who does not consent to the sexual contact* A person who is incapable of consenting due to incapacity (ORS 163.760(2)) * Sexual Contact is any	Intentionally, knowingly, or recklessly engaging in two or more unwanted contacts* that alarmed or coerced the petitioner or member of the petitioner's family or household (ORS 30.866(1)). * Contacts include	Abuse to petitioner is not required. Petitioner must show that respondent represents a risk in the near future, including an imminent risk, of suicide or of causing physical injury to another person. (ORS 166.527(6)(a))	The circumstances for mandatory arrest exist (an assault between family or household members, OR one person has placed the other in fear of imminent serious physical injury), OR The person is in immediate danger of abuse by a family or

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	<p>threat of force (ORS 107.705(1))</p>	<p>physical pain or injury Verbal abuse (see statute for definition) Threats of physical or emotional harm Sweepstakes abuse (see statute for definition) Wrongfully taking or threatening to take money or property Nonconsensual sexual contact (ORS 124.005(1))</p>	<p>touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party. (ORS 163.305)</p>	<p>coming into the visual presence of the other person, following the other person, waiting outside their home, damaging property, speaking with the person, and more (ORS 163.730(3)).</p>	<p>Court must consider certain mandated elements:</p> <ul style="list-style-type: none"> • History of suicide attempts or threats • Acts of violence against another person • History of use, attempted use, or threatened use of physical force against another person • Previous conviction for stalking, misdemeanors involving violence, or offenses involving domestic violence • DUII • Cruelty or abuse of animals • Unlawful use of controlled substances • Prior use or display of deadly weapons • Prior violations of FAPA orders • Efforts to acquire weapon in last 6 months (ORS 166.527(4)) 	<p>household member (ORS 133.055(2))</p>

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Timing of abuse	Abuse must have occurred within last 180 days. Can exclude periods of time where respondent was in jail or lived more than 100 miles from the petitioner's residence (ORS 107.710(1),(6)).	Abuse must have occurred within last 180 days. Can exclude periods of time where respondent was in jail or lived more than 100 miles from the petitioner's residence (ORS 124.010(1),(6)).	There is no time limit for when the abuse occurred.	Stalking contacts must have taken place within last 2 years (ORS 30.866(6)).	Statute implies that the conduct must be ongoing or recent since the risk must be in near future or imminent.	Statute implies timing of abuse must have been recent. Peace officer must be responding to a domestic disturbance and the person must be in immediate danger (ORS 133.035(1)).
Number of incidents of abuse	One incident of abuse (ORS 107.710(1)).	One incident of abuse (ORS 124.010(1)).	One incident of abuse (ORS 163.763(2)(B))	2 or more stalking contacts (ORS 163.73)(7)).	No minimum number of incidents	One incident of abuse (ORS 133.055)
Additional requirements	1. Petitioner must be in imminent danger of further abuse <i>(required for issuance of initial order only)</i> 2. Respondent must be a credible threat to the physical safety of petitioner or petitioner's child. (ORS 107.718(1))	Petitioner must be in immediate & present danger of further abuse (ORS 124.010(1)).	1. Petitioner must have reasonable fear for their physical safety with respect to the respondent (ORS 163.763(2)(b)(A)). 2. Respondent must not be prohibited from contacting petitioner by any other restraining or no contact order (ORS 163.763(1)(c)).	1. Victim's feeling of alarm or coercion must be objectively reasonable 2. Repeated and unwanted contacts must cause the victim reasonable apprehension regarding their personal safety/safety of immediate family (ORS 30.866(1)) If stalking contacts are purely communicative, contact must contain an unambiguous, unequivocal, and specific threat, and petitioner must believe the respondent intends	Issuance of an ERPO is mandatory if the court finds by clear and convincing evidence that the respondent presents a risk in the near future, including an imminent risk, of suicide or causing physical injury to another. (ORS 166.527(6)(a))	Emergency protective order must be necessary to prevent further abuse

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				to carry out the threat (<i>State v. Rangel</i>).		
PROCEDURE						
How to apply	Forms available at courthouse or online at www.courts.oregon.gov . Petitioner files paperwork in circuit court of county where petitioner or respondent resides (ORS 107.728)	Forms available at courthouse or online at www.courts.oregon.gov v. Petitioner, guardian, or guardian ad litem files paperwork in circuit court in county where petitioner or respondent resides (ORS 124.012).	Forms available at courthouse or online at www.courts.oregon.gov v. Petition for restraining order must be filed in circuit court in the county where petitioner or respondent resides (ORS 163.763(2)(a)).	Two routes: 1. Civil petition: Person files petition in circuit court in county where respondent resides or where one incident of stalking occurred (ORS14.080(1)), or 2. Stalking citation: Police can issue a citation upon receipt of a complaint that stalking has occurred (ORS 163.735).	Forms available at courthouse or online at www.courts.oregon.gov . Petitioner applies to circuit court in an ex parte proceeding.	Peace officer applies to a circuit court in an ex parte proceeding. Protected person must consent to the application (ORS 133.035(1)).
Filing Fees	No filing, service, or hearing fees (ORS 107.718(8)).	No filing, service, or hearing fees (ORS 124.020(7));	No filing, service, or hearing fees (ORS 163.777(1)).	No filing, service, or hearing fees (ORS 30.866(9)).	No filing, service, or hearing fees (ORS 166.527(11)).	No filing, service, or hearing fees (ORS 133.035).
Ex Parte Hearing	Ex parte hearing is held same day or next judicial day after petition is filed. Hearing can be in person or by telephone (ORS 107.718(1)).	Ex parte hearing is held same day or next judicial day after petition is filed. Hearing can be in person or by telephone (ORS 124.020). The required showing at ex parte does not have to be made by the victim, it can also be	Ex parte hearing is held same day or next judicial day after petition is filed. Hearing can be in person or by telephone (ORS 163.765(1)).	Civil petition: court holds ex parte hearing same day or next day after petition is filed (ORS 30.866). Stalking citation: no ex parte hearing, police officer issues citation requiring respondent to appear in court in 3 days to show cause	Ex parte hearing is held same day or next judicial day after petition is filed. Hearing can be in person or by video. (ORS 166.527(2); 166.527(5)(b)). Hearing can be continued for good cause (ORS	No hearing requirement. Peace officer submits the proposed order and supporting declaration ex parte to the on-call judge (ORS 133.035(1), (9)).

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		made by a guardian, GAL, a witness to abuse, or Adult Protective Services worker who conducted an investigation (ORS 124.020(3)).		why a protective order should not be entered against them (ORS 163.735(1)).	166.527(5)(c). If court declines to enter the order, court must state with particularity the reasons for the denial on the record (ORS 166.527(12)).	
Contested Hearing	<p>Contested hearing occurs if respondent requests a hearing within 30 days of service (ORS 107.718(10)(a)), or if court sets an exceptional circumstances (EC) hearing.</p> <p>EC hearing is set if there are concerns about petitioner's request for custody. EC hearing is also contested hearing and respondent's only opportunity to object to restraining order (ORS 107.716(2)(a),(c)).</p> <p>If no EC hearing is set and respondent fails to contest the order within 30 days, it is</p>	<p>Contested hearing occurs if respondent requests a hearing within 30 days of service (ORS 124.020(9)).</p> <p>Protected person can also request a hearing if GAL or guardian applied for order on their behalf (ORS 124.010(7)(c),(d)).</p> <p>Court must provide petitioner with a copy of respondent's hearing request (ORS 124.020(9)(b)).</p> <p>Hearing can be held by telephone (ORS 124(9)(c)).</p>	<p>Contested hearing occurs if respondent requests a hearing within 30 days of service (ORS 163.765(6)(a)).</p> <p>Note: The Court may order that the SAPO be served by alternative service per ORCP 7D(6).</p> <p>If respondent fails to appear or contest the order within 30 days, the order is upheld by operation of law. (ORS 163.765(7)).</p> <p>Court must provide petitioner with a copy of respondent's hearing request (ORS 163.765(6)(b)).</p> <p>Note: Rape Shield Law</p>	<p>Civil petition: Show cause hearing is automatically set by court when a temporary stalking order is granted at ex parte hearing. Respondent is required to personally appear at the hearing. If respondent fails to appear at hearing, court may issue a warrant, continue hearing for 30 days, or enter a permanent stalking order (ORS 30.866(3); ORS 163.738; ORS 133.110).</p> <p>Stalking citation: Show cause hearing is automatically set when a police officer issues a citation. Respondent must be given an</p>	<p>Contested hearing occurs if respondent requests a hearing within 30 days of service (ORS 166.527(9)(a)).</p> <p>Court must provide petitioner with a copy of Respondent's request for hearing and notify both parties of date and time of hearing (ORS 166.527(9)(b)).</p> <p>Oregon Evidence code applies but court may consider testimony of parties or any witness or consider sworn affidavits of parties or any witness. Court may examine the parties and witnesses. (ORS</p>	<p>No contested hearing available because of temporary nature of order</p>

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	<p>upheld by operation of law ((ORS 107.718(11)).</p> <p>To continue a FAPA after a contested hearing, court must find:</p> <ol style="list-style-type: none"> 1. Petitioner reasonably fears for their physical safety, and 2. Respondent represents a credible threat to the safety of petitioner or petitioner’s children. <p><i>Note: The “imminent danger of further abuse” finding is no longer required to continue a FAPA after hearing.</i></p> <p>Court must provide petitioner with a copy of respondent’s hearing request (ORS 107.718(10)(b)).</p> <p>Parties may request to appear by phone. Court can waive requirement that motion for telephone testimony be filed 30 days before hearing. Court should</p>		<p>applies to the contested hearing (ORS 40.210, Rule 412)</p> <p>Parties may request to appear by phone. Court can waive requirement that motion for telephone testimony be filed 30 days before hearing. Court should consider expedited nature of proceeding and whether good cause exists. Good cause includes safety and welfare of the parties or witnesses (ORS 163.770).</p>	<p>opportunity to show cause why a courts stalking protective order should not be entered (ORS 163.738(2)(a)). If respondent fails to appear at hearing, court shall issue a warrant (ORS 163.738(4)). Temporary stalking order can be issued pending further proceedings. (ORS 163.738(2)(a)(A))</p>	<p>166.530(1)(a); 166.530(2)(a)).</p> <p>Court may ensure at the contested hearing that a reasonable search has been conducted for criminal history records of the respondent (ORS 166.530(1)(b)).</p> <p>Court may not include MH diagnosis in findings, or draw nexus between mental illness and risk. (Court may apparently draw nexus between <i>conduct</i> and risk). (ORS 166.530(3)(d)).</p> <p>A continued order must include terms that weapons surrendered to law enforcement remain in LEA custody; date/time of issuance of order; date/time of expiration of order; local protocol for surrender of weapons (ORS 166.530(4)).</p> <p>Order terminating order must state</p>	

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	consider expedited nature of proceeding and whether good cause exists. (ORS 107.717(3)).				reasons on record with particularity (ORS 166.530(7)). Respondent and Petitioner may each submit a written request to terminate order once during the 12 month effective period of the order and once during any 12 month renewal period of the order (ORS 166.533(1)).	
Burden of proof	Petitioner must prove claim by a preponderance of the evidence (ORS 107.710(2)).	Petitioner must prove claim by a preponderance of the evidence (ORS 124.010(2)).	Petitioner must prove claim by a preponderance of the evidence (ORS 163.763(2)(d)).	Temporary stalking order and stalking citation can be issued upon a finding of probable cause (ORS 30.866(2); ORS 163.735(1)). Petitioner must prove claim by a preponderance of the evidence (ORS 30.866(7)).	Petitioner must prove claim by clear and convincing evidence (ORS 16.527(6)(a)).	Probable cause (ORS 133.035(1)).
Timing of hearing	Hearing must be held within 21 days of hearing request, unless respondent contests custody, then hearing must be held within 5	Court must hold a hearing within 21 days of the request for a hearing (ORS 124.015(1)).	Court must hold a hearing within 21 days of the request for a hearing (ORS 163.767).	Civil petition: Statute doesn't specify timeframe in which show cause hearing must be set.	Court must hold hearing within 21 days of respondent's request for hearing (ORS 166.527(9)(c)).	N/A

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	<p>days of request (ORS 107.716(1)).</p> <p>If court sets exceptional circumstance hearing, it must be held within 14 days.</p> <p>Respondent can request earlier hearing to be held within 5 days. (ORS 107.716(2)).</p>			<p>Stalking citation: Show cause hearing occurs within three judicial days after issuance of stalking citation (ORS 163.735).</p>		
Continuances	<p>Discretionary continuances: Court may extend hearing up to five days if one party is represented and the other party wishes to hire an attorney or hearing notice is inadequate to provide sufficient notice of hearing, (ORS 107.716(4)(a)).</p> <p>Mandatory continuance: If respondent seeks to raise an issue not indicated in hearing request or petitioner seeks new relief not granted in the original order, other party is entitled to reasonable continuance to prepare</p>	<p>Discretionary continuances: Court may extend hearing up to five days if one party is represented and the other party wishes to hire an attorney (ORS 124.015(3)).</p> <p>Mandatory continuance: If respondent or victim seeks to raise an issue not raised in hearing request, other parties are entitled to a reasonable continuance to prepare a response. (ORS 124.020(9)(c)).</p>	<p>Discretionary continuances: Court may extend hearing up to five days if one party is represented and the other party wishes to hire an attorney or hearing notice is inadequate to provide sufficient notice of hearing, (ORS 163.767(2)(b)).</p>	<p>Court may continue show cause hearing for up to 30 days (ORS 30.866(3)(a), ORS 163.738(2)(a)).</p>	<p>Court may continue the ex parte hearing, a contested hearing, a subsequent termination hearing, or a renewal hearing for “good cause.” Any order issued stays in effect during the continuance (ORS 166.527(5)(c); 166.530(2)(b); 166.533(3)(c)).</p>	N/A

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	a response (ORS 107.718(10(c))).					
Length of restraining order	One year, but order can be renewed upon a finding that a person in petitioner’s situation would reasonably fear further acts of abuse by respondent if order is not renewed. No need to prove further acts of abuse (ORS 107.718(3); ORS 107.725(1)).	One year, but order can be renewed upon “good cause shown.” No need to prove further acts of abuse (ORS 124.035).	Three possible durations: (1) Five years, but order can be renewed upon a finding that person in petitioner’s situation would reasonably fear for their physical safety if not renewed. No need to prove further acts of abuse (ORS 163.775(1)(a)). (2) If petitioner is under 18, the SAPO is effective until January 1 st of the year following the year of Petitioner’s 18 th birthday or for 5 years, whichever occurs later. (ORS 163.765(8)(a)). (3) Court shall enter a permanent order if respondent has been convicted of a crime described in ORS 163.355- 163.445 against petitioner. (ORS 163.765(8)(b)). Court may enter a permanent	Unlimited duration if judge signs a permanent order (ORS 163.738(b)). Dismissal may be allowed under case law if grounds for order no longer exist; court’s inquiry should focus primarily on whether petitioner continues to suffer “reasonable apprehension” due to the past acts of the respondent. <i>Edwards v. Biehler, 203 Or.App. 271 (2005).</i>	One year, but order can be renewed (and further renewed) within 90 days of expiration at a hearing for which both parties receive notice and at which the petitioner proves that a predicate risk remains (ORS 166.527(10); 166.535(1); 166.535(4)). Petitioner for renewal must be law enforcement or family/household member, but does not need to be the original petitioner (ORS 166.535(1)).	Expires 7 days after the judge signs the order (ORS 133.035(7)(a)).

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			restraining order if it is objectively reasonable for petitioner to fear for their physical safety and the passage of time or change in circumstance would not dissipate that fear. (ORS 163.765(8)(c))			
Modifications to protective orders	Either party may request to modify temporary custody, parenting time, ouster, and no contact provisions upon “good cause shown.” Request to modify must be made after 30 day hearing request period has passed. The petitioner can request ex parte to remove or make less restrictive ouster and no contact provisions. (ORS 107.730(1)(a)(b))	No procedure addressed in statute, but legislature seemed to anticipate amendments to order (see ORS 124.020(1))	Either party can request a modification upon “good cause shown.” The petitioner may request to make the restraining order less restrictive through an ex parte motion. (ORS 163.775(2))	Not addressed in statute	Not addressed in statute	
AVAILABLE RELIEF						
No contact provisions	Respondent can be ordered to stop contacting petitioner in person, by telephone, and by mail. (ORS 107.718(1)(i))	Respondent can be restraining from abusing, intimidating, molesting, interfering with, or menacing the victim. (ORS 124.020(1)(c))	Respondent can be restrained from contacting petitioner and petitioner’s children, family, or household members and from intimidating,	Order shall specify the type of contact respondent is to refrain from, including following the petitioner, waiting outside petitioner’s	Not available	Restraint from contacting the person protected by order and restraint from intimidating, molesting, or interfering with protected person. (ORS

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	<p>Respondent can be restrained from intimidating, harassing, interfering, and menacing petitioner and petitioner's custodial children. (ORS 107.718(1)(e), (f))</p> <p>Respondent can be restrained from entering a reasonable area around petitioner's residence, workplace, and other premises petitioner frequents (ORS 107.718(1)(c),(g)).</p>	<p>Respondent can be restrained from entering any premises if necessary to prevent further abuse. (ORS 124.020(1)(d))</p> <p>Respondent can be restrained from mailing sweepstakes promotions and ordered to remove petitioner from mailing list (ORS 124.020(1)(e)).</p>	<p>molesting, or interfering with them. (ORS 163.765(a), (b))</p> <p>Respondent can be restrained from entering a reasonable area around petitioner's residence, workplace, and other premises if necessary to prevent further abuse (ORS 163.765(1)(b)(C)).</p>	<p>home, sending emails, or damaging the petitioner's property. (ORS 163.738(2)(b), ORS 163.730)</p>		133.035(4)(a))
Temporary custody / parenting time orders	<p>Court can enter temporary custody orders (ORS 107.718(1)(a)).</p> <p>Court can modify a prior custody order if necessary for the safety of the petitioner or petitioner's child (ORS 107.722(2)).</p>	Not available	Not available	Not available	Not available	Not available
Monetary relief	Available if necessary for safety of petitioner or petitioner's children (ORS 107.718(1)(h)).	If court finds that respondent financially abused the protected person, the court can order relief as	(not explicit in the statute, but see 'other relief' provision below)	Petitioner can request damages, including punitive damages and damages for emotional distress (ORS	Not available	Not available

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		necessary to remedy or stop the financial abuse (ORS 124.020(2)(a)).		30.866(4)).		
Ouster	<p>Respondent can be required to move from petitioner's residence if:</p> <p>Residence is solely in petitioner's name, Residence is jointly owned/rented by petitioner and respondent, or Parties are married to each other (ORS 107.718(1)(b)).</p> <p>Civil standby: Party moving out is entitled to have police officer accompany them one time, for 20 minutes, to collect essential personal items from residence (ORS 107.718(1)(d), 107.719)).</p>	<p>Respondent can be required to move from petitioner's residence if:</p> <p>Residence is solely in petitioner's name, Residence is jointly owned/rented by petitioner and respondent, or Parties are married to each other (ORS 124.020(1)(a); ORS 124.015(2)(a)).</p> <p>At contested hearing, court can order either party to move from residence if residence is jointly held (ORS 124.015(2)(a)).</p> <p>Party moving out is entitled to have police officer accompany them one time, for 20 minutes, to collect essential personal items from residence (ORS 124.020(1)(b); 124.025(1))</p>	Not available	Not available	Not available	Not available, protected person should seek another, more permanent restraining order or family law remedy if they want to oust abuser from the residence

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Other relief	<p>Court can order “other relief” as necessary for safety and welfare of petitioner or children in petitioner’s custody (ORS 107.718(1)(h)).</p> <p>“Other relief” provision gives court discretion to order that Respondent not possess weapons (even at ex parte).</p> <p>Court can also provide for the safety of a service animal or pet (not animals kept for economic purposes) (ORS 107.718(1)(h)(B)).</p> <p>Court can order law enforcement to assist in recovering custody of child (ORS 107.732).</p>	<p>Court can order “other relief” as necessary for safety and welfare of petitioner (ORS 124.020(1)(f)).</p> <p>“Other relief” provision gives court discretion to order that Respondent not possess weapons (even at ex parte).</p> <p>Order can include a variety of relief to protect from “sweepstakes promotions” (ORS 124.020(1)(e)).</p> <p>Order can include a provision that Respondent refrain from exercising control over the money or property of the petitioner and return misappropriated money/property to petitioner (ORS 124.020(2)(a)).</p>	<p>Court can order “other relief” as necessary for safety and welfare of petitioner or petitioner’s children, family, or household members (ORS 163.765(1)(b)(E)).</p> <p>“Other relief” provision gives court discretion to order that Respondent not possess weapons (even at ex parte).</p>	<p>Court can order respondent to undergo mental health evaluation and treatment (ORS 30.866(3)(a); ORS 163.738(5)).</p> <p>Court can initiate civil commitment proceedings if respondent is dangerous to self or others (ORS 30.866(3)(a); ORS 163.738(6)).</p>	<p>The only relief available under ERPO is the ban on respondent’s possessing or purchasing or attempting to purchase or possess a deadly weapon, and the requirement to surrender the deadly weapons (ORS 166.527).</p>	<p>No other relief available under this temporary protective order</p>
OTHER PROVISIONS						

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Attorney fees and costs	Reasonable attorney fees and costs available (ORS 107.716(3)).	Reasonable attorney fees and costs available (ORS 124.015(b)).	Not available	Petitioner (only) may recover attorney fees (ORS 30.866(4)).	Not available	Not available
Violation of order	<p>Violations of order</p> <ul style="list-style-type: none"> • Petitioner cannot violate the terms of the order that restrain respondent • Petitioner can be found in contempt for violating custody or parenting terms in the order • Mandatory arrest laws apply if respondent violates the restraining order (ORS 133.310(3)). • After respondent is served with restraining order, it is entered into LEDS and NCIC (ORS 107.720(1); ORS 124.022(2)) 					
Consequences of violation	<p>District attorney brings a contempt case against respondent in a quasi- criminal matter. (ORS chpt. 33 and UTCR chpt. 19).</p> <p>Contempt proceedings can be brought in county of issuance or where violation occurred (ORS 107.728).</p>	<p>District attorney brings a contempt case against respondent in a quasi- criminal matter. (ORS chpt. 33 and UTCR chpt. 19).</p> <p>Contempt proceedings can be brought in county of issuance or where violation occurred (ORS 124.012).</p>	<p>District attorney brings a contempt case against respondent in a quasi- criminal matter. (ORS chpt. 33 and UTCR chpt. 19).</p> <p>Contempt proceedings can be brought in county of issuance or where violation occurred (ORS 163.773).</p>	<p>First violation is a Class A misdemeanor. If respondent has a prior conviction for violating a protective order, then it is a Class C Felony (ORS 163.750(2)).</p> <p>For violations that are expressive contacts, conduct must create reasonable apprehension regarding petitioner’s personal safety (ORS 163.750(1)(c)).</p>	<p>Violation of ERPO is a Class A misdemeanor if the order was issued after notice and a hearing, confirmed by operation of law when no hearing was requested within 30 days, or renewed at hearing. Conviction for this misdemeanor results in additional 5 year ban on possession of firearms. (ORS 166.543)</p>	<p>District attorney brings a contempt case against respondent in a quasi- criminal matter. (ORS 133.035(8)(a), ORS chpt. 33 and UTCR chpt. 19).</p>
Federal gun prohibition	<p>Federal gun dispossession applies when person is subject to a qualifying protective order:</p> <ul style="list-style-type: none"> • Order was issued after a hearing where respondent had actual notice and opportunity to be heard • Parties have an intimate partner relationship <ul style="list-style-type: none"> ○ Spouse or former spouse ○ Other parent of respondent’s child ○ Person who does or did cohabit (live in a sexually intimate relationship) with respondent • Order restrains future abuse 					

Comparison Chart of Protective Orders in Oregon

Current as of September 2021

	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
	<ul style="list-style-type: none"> Credible threat finding or physical force prohibition (18 USC §921(a)(32); 18 USC §922(g)(8)). 					
	FAPAs will almost always trigger the federal gun prohibitions if the order is upheld after a contested hearing (arguably even when respondent fails to show up to the hearing).	Credible threat finding is not required in EPPDAPA. Therefore, a Judge would have to make additional findings (listed in the “Firearms Findings” in the “Order After Hearing”) for federal gun prohibitions to apply.	A finding of “credible threat” is not required in SAPO. Therefore, a Judge would have to make additional findings that the respondent is a “credible threat” (listed in the “Firearms Findings” in the “Order After Hearing”). In addition, the requisite relationship will be rare in a SAPO unless the petitioner is a minor.	Credible threat finding is not required in SPOs. Therefore, a Judge would have to make additional findings (listed in the “Firearms Findings” in the “Order After Hearing”). See ORS 30.866(10) and ORS 163.738(b) for authority to include firearms findings.	Does not apply because ERPO does not restrain from harassing, stalking, or threatening.	Does not apply because there is no contested hearing.
State gun prohibition	It is unlawful for a respondent to knowingly possess a firearm or ammunition if subject to a court order that: <ol style="list-style-type: none"> was issued or continued after a hearing for which the respondent had actual notice and opportunity to be heard, or was issued, continued, or remains in effect 	Courts may order “No Firearms” under the provision of “other relief” that the court considers necessary to provide for the safety and welfare of the petitioner. <p>For state firearms prohibitions to apply, the court would need to make a credible threat finding and the petitioner would need to be a family or</p>	Courts may order “No Firearms” under the provision of “other relief” that the court considers necessary to provide for the safety and welfare of the petitioner. <p>For state firearms prohibitions to apply, the court would need to make a credible threat finding and the petitioner would need to be a family or</p>	If the respondent has been convicted of stalking under ORS 163.732, it is unlawful for the respondent to knowingly possess a firearm or ammunition. (ORS 166.255(1)(c)) <p>If there has been no stalking conviction, state firearm prohibition applies only if the court makes a credible threat finding and if the petitioner is</p>	Does not apply because ERPO does not restrain from stalking, intimidating, molesting, or menacing.	Does not apply because there is no contested hearing.

Comparison Chart of Protective Orders in Oregon

Current as of September 2021

	FAPA	EPPDAPA	SAPO	SPO	ERPO	EPO
	<p>after the respondent received notice of the opportunity to request a hearing and either requested the hearing and didn't show, withdrew the request before the hearing occurred, or did not request a hearing.</p> <p>The court order must restrain the respondent from stalking, intimidating, molesting, or menacing the petitioner and includes a finding that the respondent represents a credible threat to the physical safety of the petitioner. (ORS 166.255(1)(a))</p>	<p>household member of the respondent. (ORS 166.255(1)(a))</p>	<p>household member of the respondent. (ORS 166.255(1)(a))</p>	<p>a family or household member of the respondent. (ORS 166.255(1)(a))</p>		

Materials created by Legal Aid Services of Oregon and Oregon Law Center July 2017. Updated by Amy Benedum and Judge Maureen McKnight of the Oregon Judicial Department, and Oregon Law Center February 2020; rev Sept. 2021.

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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

PETITIONER NAME,

Petitioner,

Case No. (insert case number)

v.

MOTION TO STAY DEPOSITION

RESPONDENT NAME

Respondent.

ORAL ARGUMENT REQUESTED

The Petitioner, through her attorney, attorney name, respectfully moves this court to stay the deposition of Petitioner by Respondent’s attorney in this case during the pendency of the current criminal case against Respondent, case no. (criminal case number), which is based on the same facts and circumstances as stated by Petitioner in the underlying petition for her restraining order in this case. The Petitioner relies upon her rights under the Oregon Constitution and Oregon statutes as a crime victim in the criminal case, as well as the below listed authorities.

United States v. Kordel, 397 US 1 (1970)

Keating v. Office of Thrift Supervision, 45 F.3d 322 (9th Cir. 1995)

Or. R. Civ. P. 36(C)

A further memorandum of law will be subsequently filed by Petitioner to support this motion.

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Here you can insert additional procedural information such as when deposition notice was served, what deposition date opposing counsel is asking for, and other relevant court dates of both cases if necessary to inform the court when you would like the hearing on this motion to occur.

Dated: October 18, 2022.

Submitted by:

Attorney Name, OSB
Attorney for Petitioner

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CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2022, I served true copies of the foregoing document **TITLE OF MOTION** on opposing counsel by pre-paid First Class mail, email, or through the OJD eCourt Efile and Serve system:

Opposing Counsel Name, Address, Email.

Attorney Name, OSB
Attorney for Petitioner

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON

2 FOR THE COUNTY OF MULTNOMAH

3 PETITIONER NAME,

Petitioner,

Case No. (insert case number)

4 v.

**MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO STAY DEPOSITION**

5 RESPONDENT NAME

6 Respondent.

7
8 **STATEMENT OF FACTS/HISTORY**

9 Insert procedural history and any other relevant facts here. Be sure to include facts
10 showing the FAPA and criminal charges are based on the same incident and will be
11 supported by same evidence/testimony.

12 **ARGUMENT**

13 **1. The Court should stay the deposition because the stay is “in the interests of
justice.”**

14 Courts have the authority to stay civil proceedings or civil discovery pending the
15 outcome of a related criminal action when to do so would be in “the interests of justice.”
16 *United States v. Kordel*, 397 US 1, 12 n.27 (1970); *Keating v. Office of Thrift Supervision*, 45
17 F.3d 322, 324 (9th Cir. 1995) (quoting *Kordel*). This power to stay proceedings is part of a
18 court’s inherent power to “control the disposition of causes on its docket with economy of
19 time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 US 248, 254
20 (1936).

1 When deciding whether to stay proceedings in the face of a related criminal case, courts
2 must consider particular circumstances and competing interests involved in the case. *Landis*,
3 299 US at 254-255. The party requesting the stay bears the burden of demonstrating that
4 the stay is necessary. *Id.*, at 255.

5 Oregon courts have not yet articulated specific factors that a court must consider when
6 deciding whether a stay is in the interests of justice. Most jurisdictions consider the same
7 core factors when making a decision: (1) the extent to which the issues presented in the
8 criminal case overlap with those presented in the civil case, including the extent to which
9 pretrial proceedings implicate the defendant's Fifth Amendment rights; (2) the status of the
10 criminal case, including whether the defendant has been indicted; (3) the interests of any
11 party in staying the proceeding; (4) the prejudice to any party from staying the proceeding;
12 (5) the interests of nonparties; (6) court convenience; and (7) the interest of the public in the
13 civil and criminal litigation. *See, e.g., Keating*, 45 F.3d at 324; *Dominguez v. Hartford*
14 *Financial Serv's Grp., Inc.*, 530 F.Supp.2d 902, 905 (S.D. Tex. 2008); *State v. Deal*, 740 N.W.2d
15 755, 766 (Minn. 2007); *King v. Olympic Pipeline Co.*, 16 P.3d 45, 52-53 (Wash. Ct. App. 2000).
16 The balance of factors for or against a stay may change over time as the criminal case
17 develops.

18 **a. Under the above factors, the court should find that the factors weigh in favor
19 of granting a stay.**

20 Apply the below factors to your case (example language from previous case has been left
21 in so be sure to modify everything from this section down to fit your particular case). Click
22 on this message and hit space bar to remove it.

23 (1) The issues presented in both the criminal case and the civil restraining order case are
24 the same – they involve the same incident date and the same abuse by respondent.

1 Testimony about the abuse and evidence of injuries to the victim would be the same in both
2 cases. Respondent, at this time, has not asserted his Fifth Amendment rights in the
3 restraining order case.

4 (2) The respondent has been indicted by the grand jury and the criminal case is currently
5 pending as Multnomah County Circuit Court Case 13-1135271.

6 (3) The interests of petitioner in staying the deposition in this case are strong. Petitioner
7 is in fear of respondent and would suffer emotional and psychological harm if forced to
8 attend a deposition, likely at his attorney's office, which would cause her to be in the same
9 room as respondent. Additionally, being asked again to recount the traumatic events of
10 November 14, when she has already given her statement to the police, written her
11 description of the event in her petition, and testified in front of the grand jury. Further
12 interviewing of the petitioner about the abuse would be emotionally and psychologically
13 harmful to petitioner.

14 (4) Respondent would not be prejudiced by staying the deposition in this case. As there
15 is now a criminal case pending, respondent, as a criminal defendant, is entitled to discovery
16 from the State, including all police reports and other recorded statements of the victim
17 made about the abuse on November 14. Thus, respondent will have a full statement of the
18 petitioner, along with police reports identifying other witnesses and evidence, to use to
19 prepare for the contested hearing in this case. In addition, petitioner does not seek a further
20 continuance of the contested restraining order hearing, and will be ready to proceed on
21 January 16. Staying the deposition will not cause further delay or prejudice to respondent in
22 this case.

1 (5) The interests of a nonparty, the State of Oregon, in staying the deposition in this case
2 are strong. As further discussed below, the victim has a right to refuse a discovery or
3 deposition request from a criminal defendant. To allow the respondent to depose the
4 petitioner about the very same facts that form the basis of the criminal case would be
5 allowing a defendant to circumvent the protections put in place by the Oregon Constitution
6 and Oregon’s criminal statutes.

7 (6) Staying the deposition in this case will not inconvenience the court. The petitioner is
8 not asking for further continuance of the contested restraining order hearing and is
9 prepared to go forward on January 16.

10 (7) The interest of the public in criminal and civil litigation weighs in favor of staying the
11 deposition. The Family Abuse Protection Act was designed to give victims of abuse a way to
12 protect themselves from further abuse and contact with the abusive party. Forcing a
13 petitioner to engage in a deposition at respondent’s request undermines the purpose of this
14 civil remedy for victims. In addition, it circumvents the protections set forth in Oregon
15 statutes regarding the criminal discovery process. This point is further discussed below.

16 Weighing all the above factors, the court should find that it is in “the interests of justice”
17 to stay the deposition at this time.

18 **2. The Court should issue a protective order preventing or staying the deposition
19 under ORCP 36(C) for “good cause.”**

20 Oregon Rule of Civil Procedure 36(C) authorizes courts, upon showing of “good cause,”
21 to “make any order which justice requires to protect a party or person from annoyance,
22 embarrassment, oppression, or undue burden or expense.” Or. R. Civ. P. 36(C). Such an

1 order may provide that discovery not be had, that the discovery be had only on specified
2 terms and conditions, that the discovery may only be taken by a method other than that
3 selected by the party seeking discovery, or that the discovery be limited to certain matters.

4 *Id.*

5 To show “good cause” for the protective order, a party must provide the court with a
6 substantial and concrete reason for the requested protection. *See State v. Pettit*, 675 P.2d
7 183, 185 (Or. Ct. App. 1984) (analyzing the term “good cause” and concluding that “[i]n the
8 context of the discovery statutes, good cause means a substantial reason – one that affords
9 a legal excuse.”)

10 Oregon courts have not ruled directly on the issue of a victim’s request for a
11 protective order to stay discovery during the pendency of a related criminal case. Case law
12 from other jurisdictions suggests that a victim would be able to establish “good cause”
13 where allowing the defendant to proceed with discovery would violate the victim’s rights or
14 enable the defendant to circumvent criminal discovery. *See, e.g. State v. Lee*, 245 P.3d 919,
15 923-24 (Ariz. Ct. App. 2011) (concluding that trial court erred when it denied the state’s
16 requests for a protective order in criminal and civil cases to prevent the pretrial depositions
17 of crime victims where the victims had a constitutional right to refuse a defendant’s
18 deposition request); *State v. Deal*, 740 N.W.2d 755, 765 (Minn. 2007) (finding that the public
19 policy of “[m]aintaining the integrity of a criminal proceeding by preventing circumvention
20 of the criminal discovery rules” can constitute “‘good cause’ to issue a protective order
staying civil discovery”).

1 “Good cause” also exists for a protective order staying some or all civil discovery
2 during the pendency of a related criminal case where the victim can show that the stay is
3 necessary to protect her from harassment or intimidation by the defendant. *See State ex rel*
4 *Anderson v. Miller*, 882 P.2d 1109, 1111-1112 (recognizing that a protective order might be
5 necessary to protect a civil litigant from intimidation or harassment by the opposing party,
6 but finding that the trial court erred in issuing a protective order where “the record contains
7 no factual basis to support a [protective order] ruling based on intimidation or harassment”).
8 Finally, a victim has “good cause” for a protective order where the victim can demonstrate
9 that allowing the defendant to proceed with discovery would put the victim’s emotional and
10 psychological health at risk. *Deal*, 740 N.W.2d at 767 (noting that the risk of a civil deposition
11 intimidating or harassing a crime victim is high where the victim is a minor who was sexually
12 assaulted by the criminal defendant seeking to civilly depose her).

13 In this case, the petitioner requests the stay in order to prevent circumvention of the
14 criminal discovery process, to uphold her rights as a crime victim, and to protect her from
15 unnecessary embarrassment, harassment, intimidation, and emotional and psychological
16 harm.

17 **a. The Court should stay the deposition because allowing the deposition would**
18 **allow the defendant to circumvent the criminal discovery process.**

19 The scope and methods of discovery in a criminal case are much narrower than those
20 available in a civil case. Oregon law does not afford defendants the right to depose potential
21 state’s witnesses. *State ex rel. O’Leary*, 769 P.2d 188, 192 (Or. 1989). Criminal depositions in

1 Oregon are not discovery devices, but instead are tools to preserve witness testimony. ORS
2 136.080, 135.420.

3 These differences reflect the legislature’s determination of what processes best
4 accomplish the different purposes of civil litigation and criminal prosecution. *State v.*
5 *Bonebrake*, 736 P.2d 1020, 1023 (Or. 1987). If the respondent is allowed to depose the
6 petitioner while she is a named victim in a criminal case based upon the exact same abuse
7 alleged in her petition, this use of civil discovery would undermine this careful legislative
8 determination.

9 **b. The Court should stay the deposition because allowing the deposition would**
10 **violate the petitioner’s rights, as a crime victim, to refuse a defense discovery**
11 **request and be protected from the defendant.**

12 The Oregon Constitution guarantees crime victims “[t]he right to refuse an interview,
13 deposition or other discovery request by the criminal defendant or other person acting on
14 behalf of the criminal defendant, provided, however, that nothing in this paragraph shall
15 restrict any other constitutional right of the defendant to discovery against the state.” Or.
16 Const. Art 1, Sec 42. Similarly, under Oregon statute, “[a] victim may not be required to be
17 interviewed or deposed by or give discovery to the defendant or defendant’s attorney unless
18 the victim consents.” ORS 135.970(3). Allowing a criminal defendant to circumvent such
19 protections through civil discovery conflicts with the plain language of these rights.

20 Crime victims also have “[t]he right to be reasonably protected from the criminal
21 defendant or the convicted criminal throughout the criminal justice process.” Or. Const. Art

1 1, Sec 43(1)(a). Allowing Respondent to depose Petitioner would remove a protection built
2 into the criminal justice process and would undermine the purpose of these rights.

3 The Arizona Court of Appeals recently reached a similar conclusion in *State v. Lee*, 245
4 P.3d 919 (Ariz. Ct. App. 2011). Like Oregon’s constitution, Arizona’s constitution guarantees
5 a crime victim the right “[t]o refuse an interview, deposition, or other discovery request by
6 the defendant, defendant’s attorney, or the person acting on behalf of the defendant.” Ariz.
7 Const. Art. II, Sec 2.1(A)(5). In *Lee*, the court held that “victims retain their constitutional
8 right to refuse to be deposed by defense in a civil proceeding where the subject matter of
9 the proposed deposition is the criminal offense committed against the victim.” 245 P.3d at
10 920. The court found that “even if the right to refuse to be deposed is limited to the
11 duration of the criminal justice process, a victim may assert that right in any venue during
12 that time.” *Id.* At 923-24. Noting that the purpose of the right “is to protect victim privacy
13 and minimize contact with the defendant prior to trial,” the court concluded that “[a]ny
14 deposition about the offense would expose victims to the very harm against which the
15 [Victims Bill of Rights] protects... [T]he right to refuse to be deposed is immediately and
16 completely defeated if the defendant can compel a victim to submit to a deposition in a
17 separate proceeding.” *Id.* (internal citations omitted).

18 Similarly, to avoid undermining the rights of crime victims in Oregon, and the rights of
19 Petitioner, the court should grant the request to stay the deposition in this case.

20 **c. The Court should stay the deposition in order to protect Petitioner from
21 annoyance, embarrassment, oppression, undue burden, and intimidation and
22 harassment by Respondent.**

1 The Petitioner in this case is especially prone to embarrassment, intimidation, and
2 harassment by the Respondent through this request for a deposition because she is a victim
3 of domestic violence, including both physical and sexual violence. Petitioner has come
4 forward to report abuse by Respondent to the police, and is a named victim in a criminal
5 case. Petitioner has already provided statements to the police and to the court about
6 Respondent's abuse against her, and Petitioner is still in fear that Respondent will harm her.
7 Petitioner does not want to be in the same room as Respondent, as she has already been
8 physically and sexually assaulted by Respondent, and would suffer further emotional and
9 mental harm by being forced to comply with a deposition. Speaking about the subject
10 matter of the deposition, an act of abuse that recently occurred, is traumatic for the
11 Petitioner and would cause her further harm. Petitioner is willing to testify as required in the
12 civil and criminal cases, but should not be subjected to the further, unnecessary questioning
13 of a deposition because it will subject her to harassment, intimidation, and embarrassment.

14 **CONCLUSION**

15 For the above-stated reasons the court should find good cause to stay the deposition in
16 this case until the related criminal case is adjudicated. If the court chooses not to grant the
17 stay, in the alternative the Petitioner requests that the court enter an order Describe further
18 alternative deposition/discovery restrictions here.

19 Dated: October 18, 2022.

20 _____
Attorney Name, OSB
Attorney for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2022, I served true copies of the foregoing document **TITLE OF MEMORANDUM** on opposing counsel by pre-paid First Class mail, email, or through the OJD eCourt Efile and Serve system:

Opposing Counsel Name, Address, Email.

Attorney Name, OSB
Attorney for Petitioner

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3 IN THE CIRCUIT COURT OF THE STATE OF OREGON

4 FOR THE COUNTY OF _____

5 STATE OF OREGON

6 Plaintiff,

Case No. _____

7 **VICTIM'S MOTION TO QUASH AND**
8 **FOR THE RETURN OF RECORDS**

9 v.

10 Defendant.

11
12 Comes now the _____, the legal guardian of the minor victim _____ through
13 her attorney _____, and moves this Court for an order quashing any unlawfully issued
14 subpoenas *duces tecum* for minor victim's, Confidential Health Information ("CHI"), and that if
15 any such protected health information has been provided to the Court it be returned to the
16 provider without review. This motion is made based on the following legal provisions and
17 declaration of counsel for the victim filed herewith.

18 **I. ARGUMENT**

- 19
20 **1. The defendant's subpoena should be quashed because defendant failed to**
21 **provide 14 days written notice of the subpoena to the victim and there is no**
22 **appropriate qualified protective order in effect.**

23 Under ORS 136.447, medical records may be obtained by subpoena as provided in ORCP
24 55 [now 55D] and shall be sent only to the court or the clerk of the court before which the matter
25 is pending. Under ORCP 55D, the attorney for the party issuing a subpoena requesting
production of individually identifiable health information must serve the custodian or other
keeper of such information either with a qualified protective order or with an affidavit or written
notice that the party made a good faith attempt to provide the person whose Confidential Health
Page 1 of 5 **VICTIM'S MOTION TO QUASH AND FOR THE RETURN OF RECORDS**

1 Information (“CHI”) is sought, or the person’s attorney, written notice that allowed 14 days after
2 the date of the notice to object; The written notice included the subpoena and sufficient
3 information about the litigation underlying the subpoena to enable the person or the person’s
4 attorney to meaningfully object; The party must certify that either no written objection was
5 made within 14 days, or objections made were resolved and the command in the subpoena is
6 consistent with that resolution; and The party must certify that the person or the person’s
7 representative was or will be permitted, promptly on request, to inspect and copy any CHI
8 received. A subpoena to command production of CHI must comply with the requirements of this
9 section, as well as with all other restrictions or limitations imposed by state or federal law. If a
10 subpoena does not comply, then the protected CHI may not be disclosed in response to the
11 subpoena until the requesting party has complied with the appropriate law.
12

13 The victim’s privacy interests in her medical records are recognized by additional federal
14 and state laws¹. The victim in this case was not provided written notice, was not given 14 days
15 following a written notice to object to the production of her records, and there is not a qualified
16 protective order in place. The victim requests that any documents provided to the Court pursuant
17 to these unlawful subpoenas be returned to providers.
18

19
20 **2. ORS 136.580 permits the use of a subpoena *duces tecum* only for the**
21 **production of material to be offered into evidence at trial or another court**
22 **proceeding.**

23 A defendant’s right to discovery and to compel production of evidence does not
24 extend him the ability to sift through the victim’s confidential and privileged records held
25 by a third party in order to fish for potentially useful information. His statutory subpoena
power does not expand his ability to seek discovery from a non-party to a case. ORS

1 136.580, which allows the parties to issue subpoenas for “books, papers, or documents,”
2 is not a discovery statute. It permits a criminal defendant to use a subpoena *duces tecum*
3 to request that a witness bring specified documents to the trial or trial-related court
4 proceedings at which the documents may be offered into evidence, *and* specifically
5 forbids the issuance of pre-trial subpoenas for obvious discovery purposes². ORS
6 136.580(2) provides that:

7
8 Upon motion of the state or the defendant, the court may direct that the books,
9 papers or documents described in the subpoena be produced *before the court* prior
10 to the trial or prior to the time when the books, papers or documents are to be
11 offered in evidence and may, upon production, permit the books, papers or
12 documents to be inspected and copied by the state or the defendant and the state’s
13 or the defendant’s attorneys.³

14 This provision “presupposes the existence of a subpoena *duces tecum* issued in
15 accordance with ORS 136.567 and ORS 136.580(1)⁴.” The subpoena must first properly
16 summon “documentary materials to trial or to some other court proceeding where they ‘are to be
17 offered in evidence⁵.’” ORS 136.580(2) allows a criminal defendant to ask for early production
18 of material that “will be available for evidentiary use at the proceeding to which they already
19 have been subpoenaed⁶.” The defense must show that a subpoena is crafted to produce
20 admissible evidence rather than constitute a fishing expedition⁷.

21 Defendant may use a subpoena *duces tecum* only to obtain specific documentary
22 materials known by the defendant to exist, which the defendant can describe specifically, and

23 ¹ including 42 U.S.C. § 1320d *et seq* (Health Insurance Portability and Accountability Act of 1993), 45
24 C.F.R. Parts 160 and 164 (Privacy Rules), ORS 192.553 *et seq* (protection of health care information
25 under Oregon law).

² *State v. Cartwright*, 336 Or 408, 415–415 (2004) (emphasis added) *State v. Running*, 336 Or 545, 561
(2004). (“We reaffirm our conclusion in *Cartwright* that ORS 136.580 does not allow a criminal
defendant to use the subpoena *duces tecum* as a discovery device.”).

³ Emphasis added.

⁴ *State v. Cartwright*, 336 Or 408, 415 (2004).

⁵ *Id.*

⁶ *Id.*

⁷ See *United States v. Nixon* 418 US 683, 690–699 (1974), citing *Bowman Dairy Co. v. United States*,
341 US 214 (1951) and *United States v. Iozia*, 13 F.R.D. 335, 338 (SDNY 1952) (observing that “certain
fundamental characteristics of the subpoena *duces tecum* in criminal cases” include the fact that “it was
not intended to provide a means of discovery” and “not intended as a general ‘fishing expedition’”).

1 which materials are determined by the court to be relevant and admissible as evidence at trial.
2 Defendant must make an actual showing, not just speculate as to what may be contained in the
3 materials⁸.

4 Here, Defendant has not filed any motions for pretrial production, but rather issued
5 subpoenas for pretrial-production without notice to the victim, any motion to the court providing
6 a basis for his request for early production, or any order of the court. Any materials produced to
7 the Court pursuant to these subpoenas should be returned to the provider without review or
8 dissemination.
9

10 11 **3. The victim has the right to refuse to provide discovery to Defendant.**

12 The victim has asserted her the specific right, under Article 1, Section 42(1) (c) of the
13 Oregon Constitution, to "...refuse an interview, deposition, or other discovery request by the
14 criminal defendant or other person acting on behalf of the criminal defendant, provided,
15 however, that nothing in this paragraph shall restrict any other constitutional right of the
16 defendant to discovery against the state." The victim in this case wishes to exercise his right to
17 refuse all discovery requests from the defendant, including subpoena requests for documents
18 from third parties. This right, like the other crime victims' rights embodied in the Oregon
19 Constitution, exists to "...accord crime victims due dignity and respect and ... also to ensure that
20 a fair balance is struck between the rights of crime victims and the rights of criminal
21 defendants..." (Article 1, Section 42 (1)).
22
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25 ⁸ See *State v. West*, 250 Or App 196, 203-204 (2012) (citations omitted) (trial court properly denied defendant's request for the production of documentary materials concerning the intoxilyzer where defendant "did not know what the materials would show; he simply sought them for the general purpose of determining whether they were favorable[.]" and *State v. Christopher*, 55 Or App 544, 555 (1982) ("Defendant's belief by itself constituted an insufficient showing to compel an *in camera* inspection of the personnel records, let alone complete disclosure to defendant.").

