

## WHAT JUSTIFIES THE ISSUANCE OF A STALKING ORDER?

Q TWO INSTANCES OF STALKING ARE REQUIRED.

Q THE STALKING BEHAVIOR MUST HAVE TAKEN PLACE WITHIN THE LAST TWO YEARS.

“STALKING” IS:

- Intentional, knowing, or reckless repeated and unwanted contact that alarms or coerces the Petitioner or a member of Petitioner’s immediate household or family; when
- It is objectively reasonable for the Petitioner to feel alarmed or coerced; and
- The contacts cause reasonable fear regarding the Petitioner’s (or immediate household or family members’) physical safety.

PETITIONER’S FEAR MUST BE ACTUAL AND REASONABLE.

- Petitioner must show that anyone in Petitioner’s shoes would feel alarmed or coerced by the stalker’s contact.
- Petitioner must show that the stalker’s contact has actually caused reasonable fear for the physical safety of Petitioner or a member of Petitioner’s household or family.

EXAMPLES OF STALKING BEHAVIOR MIGHT BE:

- Following;
- Waiting outside home, school, job or property;
- Committing a crime (including sexual assault, domestic violence, and others) against victim, pets, or property;
- Causing or threatening to cause injury;
- Sending letters or e-mails, telephoning, interfering with other relationships; and
- Other types of behavior that create actual and reasonable fear for petitioner’s physical safety.
- Any speech-based communication (letter, phone, e-mail, etc.) is protected by the First Amendment and so must rise to the level of an actual threat in order to qualify as stalking.

CERTAIN LIMITATIONS:

- Conduct protected by labor laws is not stalking.
- A person in the custody of law enforcement or corrections cannot obtain a stalking order.
- Conduct within the scope of law enforcement or corrections officer’s official duty is not stalking.

## WHAT CAN A STALKING ORDER DO?

A STALKING ORDER CAN PROHIBIT THE STALKER FROM:

- Coming into the visual or physical presence of the protected person;
- Following the protected person;
- Waiting outside the home, school, place of work, etc. of the protected person or of a member of that person’s family or household;
- Sending or making written or electronic communication to the protected person;
- Speaking with the protected person by any means;
- Committing a crime against the protected person or property of that person;
- Communicating with third parties with the intent of affecting relationships of the protected person;
- Delivering any object to the protected person directly or through a third party;
- Contacting the protected person in other ways;
- In some circumstances, the Court may order a mental health evaluation of Respondent.
- In some circumstances, monetary damages may be ordered. (This pamphlet does not discuss monetary damages.)

### ELIGIBILITY OF MINORS

- A parent or guardian may request a stalking order on behalf of a minor child or dependent.
- A petitioner may get a stalking order against a stalker who is under the age of 18.

### HOW LONG DO STALKING ORDERS LAST?

Once final, a stalking protective order is permanent unless otherwise ordered by a Judge. (The Court retains equitable authority to dismiss or modify).

### HOW TO OBTAIN A STALKING ORDER

A Petitioner may obtain a Stalking Protection Order in one of two ways: by requesting a Police Citation or by submitting a Civil Petition to the Court. Each process is outlined briefly below.

## POLICE CITATION PROCEDURE

Complaint:

- Petitioner requests stalking complaint from law enforcement.
- Petitioner should fill out complaint in detail. (List dates if possible, explain fear, explain how the stalker knew contact was unwanted).
- Petitioner presents complaint to law enforcement.

Citation:

- A police officer initiates a citation if, based on the complaint and interviews, there is probable cause to believe stalking has occurred.
- A citation is **not** a stalking order.
- A citation requires the stalker to appear in Court within 3 judicial days of service of the complaint for a hearing regarding whether the Court should issue a temporary or permanent stalking protective order.
- The police officer writes the date and time of hearing on the citation when serving it on the stalker.
- The police officer must give the Petitioner a copy of the hearing notice. If the Petitioner does not appear at the hearing, the order will be dismissed.

First Hearing:

- Petitioner and Respondent are each required to appear. (Petitioner may request permission to appear by telephone.)
- The Petitioner should bring witnesses, if possible. Petitioner should make sure the police officer will be at the hearing.
- If the Court finds “probable cause” that stalking has occurred, the Court will enter a temporary order. If a temporary order is entered, the Court will set a date for a 2<sup>nd</sup> hearing regarding whether the Court should issue a permanent order.
- The first hearing is usually shorter than the 2<sup>nd</sup> hearing.
- If Respondent is not in Court for the hearing as ordered, a warrant should be issued for his or her arrest.

Second Hearing:

- If the Court finds by a “preponderance of the evidence” that stalking has occurred, the Court may issue a permanent stalking protective order or a time limited order.
- The “preponderance of the evidence” standard that must be met by Petitioner is higher than the standard at the 1<sup>st</sup> hearing.
- Petitioner will need to ensure the appearance of the police

officer and others as witnesses. Subpoenas may be necessary. Petitioner should bring other evidence as appropriate (photos of injuries, letters sent by stalker, etc.)

**Service:**

- If the Respondent is not at the 1<sup>st</sup> or 2<sup>nd</sup> hearing, s/he must be served with any resulting orders or hearing notices. In some counties, service may be provided by the sheriff for free.

**CIVIL PETITION PROCEDURE**

(In many counties, self-help paperwork for this procedure is not available at the Courthouse and this type of proceeding may require an attorney's help. In other counties, this paperwork is available at the courthouse, and a process similar to the FAPA process is in place.)

**Petition:**

- Petitioner fills out and signs petition for stalking protective order. These forms are available in some Courthouses, but not in all Courthouses. If the forms are not made available by the Court, a Petitioner may still use this route to get a stalking order, but will need the assistance of an attorney.
- The Petitioner should fill out the form in detail. (List dates if possible, explain fear, explain how the stalker knew contact was unwanted).
- The petition may set out a claim for money damages (if so, a waive-able filing and service fee may be charged.) It is best to seek the assistance of an attorney if damages are claimed.
- Petitioner files petition with court clerk at appropriate time.

**Ex Parte Hearing:**

- Petitioner goes to brief hearing with Judge.
- Petitioner may ask to speak to the Judge by telephone instead of in person.
- The stalker does not get notice of this hearing and is usually not present.
- The Judge signs the temporary stalking order if there is "probable cause" to believe that stalking has occurred.
- The Judge sets a hearing date for both parties to come back to Court to determine whether to grant a permanent order.

**Contested Hearing:**

- The Court will hear from both the Petitioner and the Respondent.
- If the Court finds by a "preponderance of the evidence" that

stalking has occurred, the Court may enter a permanent stalking protective order or a time limited order.

- The "preponderance of the evidence" standard that must be met by Petitioner is higher than the standard at the 1<sup>st</sup> hearing.
- The Petitioner should bring any witnesses and other evidence (photos of injuries, letters sent by stalker, etc.) Subpoenas may be necessary to ensure witness appearance.
- If the Respondent fails to appear at this hearing as required, the Court may issue a warrant for the Respondent's arrest.

**Service:**

- The temporary and final orders must be served on the Respondent before they can be enforced. Service is provided by the Sheriff for free (if no monetary damages are sought.)

**OTHER HELP MAY BE AVAILABLE**

- The Petitioner may be entitled to request a landlord change the locks on a home if necessary for safety.
- The Petitioner may be entitled to a release from a rental agreement if moving will protect safety.
- Petitioner may qualify for temporary assistance for domestic violence survivors (TA-DVS) from the state.
- Contact an attorney for more information about this assistance.

**ENFORCEMENT**

Violation of a stalking protective order is cause for mandatory arrest of the Respondent. The 1<sup>st</sup> violation is a Class A Misdemeanor; the 2<sup>nd</sup> is a Class C Felony.

**FEDERAL GUN LAWS**

If the Respondent has been married to or co-habited with the Petitioner, or is the co-parent of Petitioner's child, the Respondent is prohibited from using or possessing firearms or ammunition while a final stalking order is in effect.

**STALKING IS A CRIME**

Activity that forms the basis of a stalking protective order may be grounds for prosecution by the district attorney.

# STALKING PROTECTIVE ORDERS

## A GUIDE FOR ADVOCATES

ORS 30.866

ORS 163.730-163.755

Legal Aid Services of Oregon  
Oregon Law Center  
November 2003

This pamphlet is for general educational use ONLY. It is not a substitute for individual legal advice. Consult an attorney for more information or for advice. The information in this pamphlet is accurate as of November 2003. Please remember the law is always changing through actions of the courts, legislature and agencies.

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### WHAT IS A STALKING ORDER?

A stalking order is a protective order issued by a Court to prohibit a stalker from doing things like following or contacting the victim, or a member of the victim's immediate family or household.

### WHO CAN GET A STALKING ORDER?

**NO QUALIFYING RELATIONSHIP IS REQUIRED.** A Petitioner (the person asking for protection) can get a stalking order against anyone who has stalked him or her, or against anyone who has stalked a member of his or her immediate family or household. (For example, a parent could request a stalking order on behalf of a child.) The person against whom the stalking order is issued is called the Respondent.

**Additional information, such as contact information for legal aid offices and domestic and sexual violence programs, is available at <http://www.oregonlawhelp.org>.**