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LICENSED IN OREGON AND WASHINGTON

Updated 8/9/20

**INSTRUCTIONS FOR FILING YOUR COVID-19 MEDICAL
CONDITIONS CASE - MOST IMPORTANT POINTS**

- **FILE WITH COURT:** File your petition with the Trial Court Administrator in your county. Don't send it anywhere else or it won't be filed and no one will file it for you. DO NOT SEND IT TO TARA HERIVEL TO BE FILED.
- **FILL OUT ALL FORMS:** All forms enclosed must be filled out and filed with the Trial Court Administrator in the county where you are in prison (See attached list of Trial Court Administrator addresses in all Oregon counties).
- **DISMISSAL BEFORE ATTORNEY APPOINTED:** If your case is dismissed before an attorney is assigned, contact Tara Herivel at the address above, or contact O'Connor Weber, LLC, 1500 SW 1st Ave., Suite 1090, Portland, OR 97201 IMMEDIATELY, or no more than 10 days from the court dismissing your case.
- **NOTARY:** There are two pleadings enclosed that should be notarized. If you can't get a notary at your prison or jail, write on the page where there would be a notary: "I don't have access to a notary at this time, and am signing instead under penalty of perjury. Can provide notarized form if a notary is available later."

The following instructions for filing a habeas case are for people in jails and prisons currently unprotected against coronavirus or the disease Covid-19 to ask for help from the court. The purpose of the habeas petition is to make the jail or prison provide you with protection from Covid-19, or release you if they won't or can't. **By creating and distributing these documents, I am not offering to be your attorney.**

Attached is a blank legal form, called a pleading or petition, to fill out and file a habeas corpus petition in the county where you are now in jail or prison, with other forms you will need to also file at the same time to request an attorney.

Relevant laws: ORS 34.310 *et seq*; Oregon Constitution Article 1, Sections 13, 16 and 23; U.S. Constitution Article 1, Section 9; Oregon Rules of Civil Procedure.

FORMS ATTACHED

1. (1) Blank pleading/petition for a writ for habeas corpus that should apply for all jails or prisons in a Covid-19 case.
2. Affidavit of eligibility
3. Motion for court appointed attorney
4. Habeas statute – Art 1 §23, Oregon Constitution ORS 34.310
5. Pleadings to disqualify judge for bias: Affidavit, motion and order to disqualify a judge in your county you believe would be biased in hearing your case. I suggest using these forms to disqualify the following judges if you are in the county noted: Judge Courtland Geyer (Marion), Judges Menchaca and Erwin(Washington), Judge Daniel Hill (Umatilla), Judges Lung Hung and Erin Landis (Malheur).
6. A list of all trial court administrators in the state and their addresses for you to send your pleadings to.

General information:

Habeas corpus is a legal remedy available to all people in jails or prisons to challenge the conditions of their confinement. It is a fundamental right under the state and federal constitutions and courts cannot legally prevent you from bringing this type of case. Let an attorney know if your county is trying to stop habeas cases because of its interpretation of Covid-19 emergency court orders, which may be unlawful.

The case types in habeas are either 1) medical conditions (failure of jail or prison to provide adequate care for a serious medical condition) or sentencing errors that keep person incarcerated past sentence date. The following instructions concern medical cases, with Covid-19 issues.

Exhaustion of available administrative remedies: To bring a habeas case, the law requires a prisoner must exhaust all available administrative resources: that means you must kyte the issue and follow the jail or prison processes, if available. When those steps are completed, if no remedy, it's time to file a habeas. But, sometimes the circumstances are so urgent, as may be the case here, the court can hear a habeas case when administrative remedies haven't been exhausted because the risk of harm is so great and immediate.

To exhaust your remedies, kyte immediately and often to the jail or prison. Tell the jail or prison: you need protections from Covid-19, and be specific:

- You need to be a minimum of 6 feet from any other person, including staff. You need personal protection equipment (PPE) like masks and gloves and for all staff and other prisoners to have adequate PPEs, access to soap and sinks, and distance from other sick prisoners or staff.
- You need all staff and anyone entering and leaving the facility to be properly screened for infection from the virus causing Covid-19 every day.
- You have an underlying health condition (if you do) that makes you “at risk: or severe harm or even death if you get Covid-19. Specify health conditions, like asthma, respiratory disease, heart disease, obesity, over 50, other health problems.

What you win in habeas:

If you win a habeas, you usually receive injunctive relief, which means the court will order the jail or prison to provide the care needed (if a medical case). Release is extremely unusual, but with Covid-19, you or your attorney should request both release and enforcement of adequate distancing from others given the urgent circumstances.

The following are the usual steps in a habeas case.

STEP 1:

FILE THE PETITION FOR WRIT OF HABEAS CORPUS

- 1) Fill in and file enclosed blank petition for writ of habeas corpus with the court with clear description of the claims. It is extremely important to be very specific. Provide detail about how you are about to be harmed, what you have done to try and get the jailer to protect you, why you are at-risk.
- 2) File with affidavit of eligibility for court appointed counsel (see form).
- 3) File with motion for appointment of counsel **You can ask for representation by Tara Herivel (OSB# 070418, contact above) in your form for court-appointed counsel by writing in the request on the form: “Please appoint attorney Tara Herivel ”.** (see form) This is not a guarantee I will be appointed.
- 4) File the motion, affidavit and order to disqualify any judge you believe cannot be impartial in hearing your case.

All of the above forms are filed together to the Trial Court Administrator in your County. A list is enclosed with all trial court administrators and their addresses.

CLAIM TYPES

Two general types your claims must fit under:

1. CONDITIONS CASES Most common claim type in habeas:

-Allegations involve illegal conditions of confinement amounting to a deprivation of a constitutional right, like failure or refusal to provide adequate medical/mental health care, or other conditions of confinement, rising to an 8th Amendment violation of deliberate indifference, cruel and unusual punishment.

Must state in specific detail:

- 1) Need for immediate judicial scrutiny because of the “urgency of the harm to which petitioner claims to be exposed...or [judicial scrutiny] is found to be required as a matter of constitutional law,”: and
- 2) the lack of any other adequate and timely remedy. *Penrod/Brown v. Cupp*, 283 O2 21, 28, 581 P2d 934 (1978).

2. “PRISON WITHIN A PRISON” - where prisoner in segregation and isolation, or juvenile in adult prison. No requirement to show a need for immediate judicial attention of inadequacy of all other remedies (Cases: *Penrod/Brown v. Cupp*, *Armstrong v. Cupp*, *Peters v. Renfro*).

FACTS NEEDED FOR COVID-19 CLAIMS:

For Covid-19 claims, must include the specific information below in the petition. There are blank sections in the petition provided to fill in this information.

- 1) State if you have a health condition that makes you more at-risk to the disease (more likely to get very sick), like: asthma, respiratory disease, diabetes, heart disease, other serious medical conditions.
- 2) State if you have requested testing for Covid-19 and been refused.
- 3) State if you have kyted for help and been refused.
- 4) State if you are provided any protections by the jail or prison, like: maintaining at least 6 feet distance between prisoners and staff at all times, providing face masks, gloves, access to soap, adequate number of sinks, separation of prisoners who are or may be sick, daily screening of staff before entry to jail or prison.

FILING TIPS

Filing fee: File habeas pleadings along with affidavit of indigency and request for appointment of counsel with the circuit court in the county where you are incarcerated.

The fee may change, but it is currently \$281 and will be automatically withdrawn from your prisoner account. You can ask for the fee to be waived for real when and if your case starts.

Service of petition: Most pleadings have to be served formally to the opposing party or defendant. Service is not required on defendant to begin the case in habeas. The court will contact the defendant when it produces its Order to Show Cause (see below). For future pleadings, if you aren't represented by counsel, you will have to file all pleadings on the court and the defendant yourself.

Notary: Ask the jail or prison for access to a notary, and have them notarize your forms. If one is not available, write on the section of your affidavit of eligibility where a notary would sign that you cannot access a notary at this time and your petition should not be rejected on this basis.

STEP 2:

ORDER to SHOW CAUSE – issued by the court upon Defendant, with copy sent to you, the petitioner, or your attorney, if appointed.

DEFENDANT has 14 days to respond. If no response, Court will issue writ and appoint counsel. After 14 days, Ct will either deny writ as meritless, issue judgment with relief (never happens), issue the writ of habeas corpus requiring a return be made by the defendant, and set date by which plaintiff must produce first pleading called a replication.

IMPORTANT: If the court dismisses your case before counsel is appointed, contact either me, or the below law firm who will file an appeal for you **within no more than 30 days of the dismissal:**

O'Connor Weber, LLC
1500 SW 1st Ave., Suite 1090
Portland, OR 97201
(503) 226-0923

You can also email O'Connor Weber at appeal@oconnorweber.com. Send them a copy of the judgment denying your case, if you can, or at least the case number and name.

STEP 3:

DEFENDANT'S RETURN (ORS 34.421, 34.540 contents of writ) – first pleading from the state. Has plaintiff's basic information regarding criminal case serving time for at time of habeas case, and other boilerplate statements about validity of plaintiff's custody.

STEP 4:

PLAINTIFF'S REPLICATION (ORS 34.670) – first pleading with attorney, if appointed or retained, with general outline of claims. Typically, about 2-3 weeks after Defendant's return.

STEP 5:

DEFENDANT'S MOTION TO DISMISS - The attorney for the defendant will usually file a motion to dismiss, arguing there are no valid claims, regardless of whether there are valid claims. You or your attorney have 20 days to respond under ORCP 47, with a pleading called "objections to motion to dismiss". You may need to file an extension to have more time to file objections to the state's motion to dismiss. After you file your objections, a hearing date is set, and you will fight to keep your case alive. If you win, you will set a trial date and begin trial preparations. Habeas cases are supposed to be fast-tracked, with trials set as soon as possible, usually between 2-4 months out.

STEP 6:

TRIAL - If you have an attorney, this is your trial where the court will order the defendant to do whatever it is you have asked, called "injunctive relief", if you win. If the defendant is not providing adequate medical care, for example, the court can order them to do so in the specific ways requested that the court agrees is required. There are typically no awards for money damages in this type of case. If you win, you can ask for your filing fee to be reimbursed to your books, but it is unlikely that will be granted.

IF THE COURT DISMISSES YOUR CASE AT ANY TIME YOU SHOULD APPEAL

If the court dismisses your case at any time, you must appeal within 30 days of the decision. If you want to appeal, contact the attorneys at O'Connor Weber (contact above). You will not have to pay any additional fees for their help, it's considered part of your original habeas case.

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

SID# _____,
Plaintiff,
vs.
_____, Superintendent,
(Jail or prison) _____
Defendant.

) Case No.
)
) PETITION FOR WRIT OF HABEAS
) CORPUS
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Comes now the plaintiff who alleges the following:

1.

At the time of this filing, plaintiff is imprisoned and restrained of their liberty at
(current prison or jail) _____, Oregon Department of Corrections
(hereinafter referred to as "ODOC") or _____ ("Prison" or "Jail"), located in
_____ County, Oregon. The named defendant is (Superintendent or Sheriff)
_____ Superintendent or Sheriff _____ of
(current prison or jail) _____.

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2.

Said imprisonment and restraint is not by virtue of any process issued by any court of the United States or by a judge or commissioner or other officer thereof in any case where such court, judge or commissioner thereof has exclusive jurisdiction by virtue of the commencement of any action, suit, or other proceeding in such a court and before such judge, commissioner or officer thereof. The illegality of plaintiff's imprisonment and restraint is not by virtue of any judgment or decree of a competent tribunal of civil or criminal jurisdiction wherein such tribunal has exclusive jurisdiction.

3.

Plaintiff is imprisoned and restrained pursuant to judgments of conviction or charges in (case name) State v. _____, (county) _____ County Circuit Court case no(s). _____ Plaintiff's earliest release date is _____

4.

To plaintiff's knowledge and belief, they are not restrained by an order specified in ORS 34.330, and this claim has not already been adjudicated in a prior habeas corpus action. Plaintiff has sought and exhausted available administrative remedies to the best of their abilities, or plaintiff in imminent danger and exhaustion is not possible without irreparable harm, absent habeas intervention.

5.

Invoking the jurisdiction of this court to grant a writ of habeas corpus is the most appropriate method of gaining relief from the deprivations detailed herein. Without

1 immediate judicial action, plaintiff's illegal confinement will continue, they will continue
2 to suffer from defendant's illegal conditions of confinement, and they will be irreparably
3 harmed by these actions of the defendant and its agents.

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6 6.

7 A writ of habeas corpus should be granted because there is a need for immediate
8 judicial scrutiny and there are no other plain, adequate, or speedy remedies available for
9 plaintiff to seek review of the challenged actions of the defendant.

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12 7.

13 Plaintiff is incarcerated in a facility that does not follow this state's required
14 precautions to prevent the spread of the disease Covid-19, by placing plaintiff and all other
15 prisoners within the facility in imminent danger of acute illness, deprivation of essential
16 medical care, and death. Contrary to the federal and state guidance regarding Covid-19,
17 the facility does not keep prisoners adequately separated from each other or potentially
18 infected facility staff, supply adequate soap and/or sanitizer, or provide adequate access to
19 sinks, masks, or other Personal Protection Equipment ("PPE") to prevent contraction of
20 Covid-19. The facility does not adequately quarantine prisoners from staff or prisoners in
21 transport to or from the facility. The facility does not adequately screen staff for
22 coronavirus contacts or symptoms. Upon information and belief, the facility lacks
23 adequate health care services and capacity to preserve the lives of plaintiff and other
24 prisoners suffering from acute, life threatening Covid-19 infections, where infection of
25 prisoners and facility staff and will likely become widespread as Oregon fails to require

1 social distancing, PPEs, increased testing, and/or other precautions in prisons and jails
2 known to slow the spread of Covid-19.

3 8.

4 Plaintiff has underlying health condition(s) that make them at-risk for severe
5 complications or death should they contract Covid-19, the disease that arises from
6 coronavirus. Specifically, plaintiff has the following underlying health conditions,
7 determined by consensus in the medical community to make them at-risk for severe
8 complications or death:
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20 Plaintiff has requested protection from defendant from contraction of coronavirus,
21 and been denied in the following ways:

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1) By continuing to incarcerate plaintiff within a closed and densely populated
facility that threatens the life of plaintiff, other prisoners and ODOC staff;

2) By sustaining:

a.) Unavoidably and dangerously close proximity of plaintiff to other prisoners
and DOC staff who might be infected;

1 b.) Exposure to DOC staff who enter and leave the facility, a significant
2 number of whom may not be known to be infected or show symptoms of infection but will
3 nevertheless be capable of infecting plaintiff and other individuals;

4 c.) The impossibility of protecting plaintiff from infection within DOC
5 facilities that remain at their current and normal number of prisoners per cell and
6 aggregate number of prisoners at the facility;
7

8 d.) Inadequate health care at the facility to care for plaintiff and other
9 potentially acutely ill prisoners through the provision of intensive care and ventilator
10 treatment foreseeably needed to preserve plaintiff's life if infected within the facility;

11 OTHER (medical conditions and complaints not covered above):

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2 In the span of just a few months, as of May 6, 2020, over 3,809,180 people globally
3 have been confirmed diagnosed with Covid-19 and over 266,432 have died. (*Johns Hopkins*
4 *University, Coronavirus Resource Center, May 6, 2020.*) In the United States, as of May 6,
5
6 2020, over 1,193,813 people have been diagnosed with Covid-19. At least 70,802 people have
7 died, most within at-risk groups: older adults, people with asthma, HIV, diabetes,
8 respiratory disease, and heart disease, and other co-morbidities. (*Center for Disease*
9 *Control, May 6, 2020.*) Covid-19 is extremely lethal with a high rate of lethality that
10 increases significantly among at-risk groups. (*Lancet, Infectious Diseases, March 30,*
11 *2020.*) The disease is up to 20 times more infectious than seasonal flu and spreads
12 exponentially, doubling within days. The disease is erupting or about to erupt in jails and
13 prisons in Oregon as result of failure to institute comprehensive Covid-19 precautions.
14 Prisoners are currently the only group of Oregonians unprotected by Governor Kate
15 Brown's Executive Order 20-12 that requires social distancing and other precautions for
16
17 groups, for no apparent reason other than their status as people who are incarcerated.
18
19 Members of the public concerned about the safety of prisoners in this environment
20 have requested ODOC take urgent protective measures to prevent wide-spread infection
21 of Covid-19 in this vulnerable population: those requests have not yet been implemented.
22 In this environment, plaintiff is at risk of immediate harm and death and requires
23 immediate judicial scrutiny of their claims. Plaintiff is incarcerated and wholly dependent
24 upon defendant for protection from Covid-19 and has no other available adequate or
25 timely remedy. Defendant's refusal to protect plaintiff from contracting Covid-19 amounts

1 to deliberate indifference to plaintiff's serious medical needs, in violation of the Eighth
2 Amendment to the United States Constitution and Article I, Sections 13, 16 and 23 of the
3 Oregon Constitution. Defendant's conduct amounts to a denial of due process and a
4 denial of equal protection in violation of Plaintiff's constitutional rights per the Oregon
5 and United States Constitutions, and Oregon's statutory and administrative rule rights.
6

7 Plaintiff prays that a writ of habeas corpus be granted, directed to defendant,
8 commanding them to file a return stating the legality of, and the time and cause of the
9 imprisonment, incarceration, and restraint of plaintiff, or to have the body of plaintiff
10 before the court at the time and place specified in the writ; to do what shall be considered
11 by the court concerning plaintiff.
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15 DATED this _____ day of _____, 2020.
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Signature of Plaintiff
21 SID#: _____
Correctional Facility (Address):
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CERTIFICATE OF DOCUMENT PREPARATION

Pursuant to UTCR 2.010(7)

I hereby certify that the following is true:

- I selected this document and it was prepared without paid assistance.
- I requested help from an inmate legal assistant to assist me in the preparation of this document at _____.
- I paid or will pay money to _____ for assistance in preparing the document(s)/forms.

DATED this _____ day of _____, 2020.

Signature of Plaintiff
SID#: _____
Correctional Facility (Address):

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CERTIFICATE OF SERVICE

I certify that I served the foregoing PLAINTIFF'S PETITION FOR WRIT FOR
HABEAS CORPUS on the Respondent by U.S. mailing a true copy thereof, in compliance
with the "Mailbox Rule" for filing and mailing legal documents, certified by me as the
Plaintiff, upon the following parties:

Trial Court Administrator
_____ County Courthouse

_____, OR 97_____

DATED this _____ day of _____, 2020.

Signature of Plaintiff
SID#: _____
Correctional Facility (Address):

AFFIDAVIT OF ELIGIBILITY

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STATE OF OREGON)
) ss.
County of _____)

Case No. _____

I, _____, being first duly sworn on oath, depose and say:
I am employed as _____.

My monthly take-home pay is \$ _____.

I have additional monthly income of \$ _____ from the following source(s):

I have \$ _____ in checking and savings or in an inmate trust account.

I own \$ _____ equity in my house (state value after deducting amount owed).

I own \$ _____ equity in my car (state value after deducting amount owed).

I own the following additional property: _____
_____ with a total value of \$ _____.

I support _____ children.

Income of other persons living in the household: \$ _____.

PLAINTIFF

SUBSCRIBED AND SWORN to before me this ____ day of _____, 20__.

Notary Public for Oregon
My Commission Expires: _____

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF _____

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_____,)
Plaintiff,)
vs.)
_____,)
Defendant(s).)

Case No. _____

**MOTION FOR APPOINTMENT
OF COUNSEL AND ORDER**

_____, moves this Court for appointment of counsel
in the above-captioned matter, and makes the following representations of fact:

1. An affidavit of eligibility is attached.

2. I believe I am entitled to the relief of redress sought, and if able, would retain
counsel to protect my interests.

3. The interest of justice would be best served if an attorney were appointed to
assure my right to due process or other rights guaranteed by state and federal law or constitutions.

I certify the foregoing is true and correct.

Dated this _____ day of _____, 20__.

PLAINTIFF

ORDER

IT IS SO ORDERED this _____ day of _____, 20__.

CIRCUIT COURT JUDGE

2011 Oregon Constitution:

Section 23. Habeas corpus. The privilege of the writ of habeas corpus shall not be suspended unless in case of rebellion, or invasion the public safety require it.—

2011 Oregon Statutes:

WRIT OF HABEAS CORPUS

34.310 Purpose of writ; who may prosecute. The writ of habeas corpus ad subjiciendum is the writ designated in ORS 34.310 to 34.730, and every other writ of habeas corpus is abolished. Every person imprisoned or otherwise restrained of liberty, within this state, except in the cases specified in ORS 34.330, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint, and if illegal, to be delivered therefrom.

34.320 Courts having jurisdiction; transfer of proceedings. The circuit court of the judicial district wherein the party is imprisoned or restrained, and, if vested with power to exercise judicial functions, the county court and county judge of the county wherein the party is imprisoned or restrained, shall have concurrent jurisdiction of proceedings by habeas corpus, and said courts and judges may issue, hear and decide all questions arising upon habeas corpus. If a plaintiff has filed a petition in a court with jurisdiction over the proceedings, and the plaintiff is thereafter transferred to a place that is outside of the jurisdiction of that court, the court shall transfer the proceedings to the circuit court for the judicial district in which the party is imprisoned or restrained. If the court in which the petition was filed determines that by reason of the plaintiff's transfer the claims of the plaintiff do not require immediate judicial scrutiny, or are otherwise subject to dismissal, the court shall dismiss the petition. [Amended by 1999 c.114 §§1]

34.330 Who may not prosecute writ. A person may not prosecute a writ of habeas corpus if:

(1) The person is imprisoned or restrained by virtue of process issued by a court of the United States, or a judge, commissioner or other officer thereof, in cases where such courts, or judges or officers thereof, have exclusive jurisdiction under the laws of the United States, or have acquired exclusive jurisdiction by the commencement of actions, suits or other proceedings in such court, or before such commissioner or other officer.

(2) The person is imprisoned or restrained by virtue of the judgment of a competent tribunal of civil or criminal jurisdiction, or by virtue of an execution issued upon such judgment.

(3) Except as provided in ORS 138.530, the person is eligible to obtain post-conviction relief pursuant to ORS 138.510 to 138.680.

(4) The person is eligible to seek judicial review of a final order of the State Board of Parole and Post-Prison Supervision under ORS 144.335 but the person fails to seek judicial review of the order in a timely manner.

(5) The person seeks judicial review of a final order of the board under ORS 144.335 but the Court of Appeals:

(a) Summarily affirms the order of the board on the grounds that the person failed to present a substantial question of law;

(b) Otherwise disposes of the judicial review on the merits of the petitioner's issues on judicial review; or

(c) Dismisses the judicial review because of a procedural defect. [Amended by 1959 c.636 §§22; 2001 c.661 §§2; 2003 c.576 §§311; 2007 c.411 §§2]

34.340 Petition; who may apply; fee. The writ shall be allowed by the court or judge thereof upon the petition of the party for whose relief it is intended, or of some other person in behalf of the party, signed and verified by the oath of the plaintiff, to the effect that the plaintiff believes it to be true. The petition must be accompanied by the filing fee established under ORS 21.135. [Amended by 1995 c.657 §§6; 1999 c.114 §§2; 2003 c.737 §§§32,33; 2005 c.702 §§§37,38,39; 2011 c.595 §§39]

34.350 Application by district attorney. Whenever a writ of habeas corpus is required in any action, suit or proceeding, civil or criminal, to which the state is a party, the application therefor may be made by the district attorney having charge thereof, and whenever so issued the court or judge shall state in the order of allowance that it was issued on such application.

34.355 Appointment of counsel; compensation and costs. If counsel is appointed by a court to represent, in an initial proceeding by habeas corpus or on appeal as provided in ORS 34.710, a person who is imprisoned or otherwise restrained of liberty by virtue of a charge or conviction of crime and who is determined to be financially eligible for appointed counsel at state expense, the public defense services executive director shall determine compensation for counsel and costs and expenses of the person in the proceeding or on appeal. Compensation for counsel and expenses of the person in an initial proceeding or in a circuit court on appeal shall be determined and paid as provided in ORS 135.055. Compensation for counsel and costs and expenses of the person on appeal to the Court of Appeals or on review by the Supreme Court shall be determined and paid as provided in ORS 138.500. The compensation and expenses so allowed in an initial proceeding in a county court shall be paid by the county in which the person was charged or convicted of crime. [1979 c.867 §§17; 1981 s.s. c.3 §§128; 1985 c.502 §§21; 2001 c.962 §§64]

34.360 Contents of petition when person challenges authority for confinement. If the challenge is to the authority for confinement, the petition shall state, in substance:

(1) That the party in whose behalf the writ is petitioned is imprisoned or restrained of liberty, the place where, and officer or person by whom the party is imprisoned or restrained, naming both parties if their names are known, or describing them if not known.

(2) That such person is not imprisoned or restrained by virtue of any order, judgment or process specified in ORS 34.330.

(3) The cause or pretense of the imprisonment or restraint, according to the best knowledge or belief of the plaintiff.

(4) If the original imprisonment or restraint is by virtue of any order, warrant or process, a copy thereof shall be annexed to the petition, or it must be alleged that, by reason of the removal or concealment of the party before the application, a demand of such copy could not be made, or that the demand was made, and the legal fees therefor tendered to the person having the party in custody, and that a copy was refused.

(5) That the claim has not already been adjudged upon a prior writ of habeas corpus, to the knowledge or belief of the plaintiff. [Amended by 1991 c.884 §§3; 1999 c.114 §§3; 2003 c.576 §§312]

34.362 Contents of petition when person challenges conditions of confinement or deprivation of rights while confined. If the person is imprisoned or restrained by virtue of any order, judgment or process specified in ORS 34.330 and the person challenges the conditions of confinement or complains of a deprivation of rights while confined, the petition shall:

(1) Comply with requirements of ORS 34.360 (1), (3), (4) and (5); and

(2) State facts in support of a claim that the person is deprived of a constitutional right that requires immediate judicial attention and for which no other timely remedy is practicably available to the plaintiff. [1991 c.884 §§5; 2003 c.576 §§313]

34.365 Filing petition of prisoner without payment of filing fees; fee as charge against trust account. (1) Any court of the State of Oregon may authorize the filing of a petition for a writ of habeas corpus by or on behalf of any person imprisoned or otherwise restrained of liberty by virtue of a charge or conviction of crime without payment of the filing fees therefor, if such person presents to the court or judge thereof satisfactory proof, by affidavit and as otherwise required by such judge, that the person is unable to pay such fees.

(2) Notwithstanding the fact that a court has authorized the filing of a petition without payment of the filing fee required by ORS 34.340, the fee may be drawn from, or charged against, the plaintiff's trust account if the plaintiff is an inmate in a correctional facility. [1955 c.493 §§1; 1995 c.657 §§7; 1999 c.114 §§4]

34.370 Order to show cause; time for ruling on show cause order; attorney fees; entry of judgment or issuance of writ; effect. (1) Except as provided in subsection (6) of this section, the judge to whom the petition for a writ of habeas corpus is presented shall, without delay, issue an order directing the defendant to show cause why the writ should not be allowed.

(2) Upon the issuance of a show cause order under subsection (1) of this section, the following shall apply:

(a) The judge shall order that the defendant appear in writing in opposition to the issuance of the writ as soon as is practicable and not more than 14 days from the date that the show cause order issues.

(b) The judge shall rule on the show cause order within seven days after either the defendant files a written appearance in opposition or the appearance period expires, whichever comes first. Upon making a ruling, the judge shall do one of the following, as appropriate:

(A) If the petition is a meritless petition, issue a judgment denying the petition and ordering the plaintiff to pay the cost of attorney fees incurred by the defendant. In no case shall the award of attorney fees exceed \$100. The fees may be drawn from, or charged against, the inmate's trust account.

(B) Issue a judgment granting appropriate habeas corpus relief.

(C) Issue a writ of habeas corpus requiring that a return be made.

(3) Entry of a judgment under subsection (2)(b)(A) or subsection (6) of this section shall be without prejudice. The judgment shall explain to the parties the reason for the denial.

(4) If the court has issued a writ of habeas corpus requiring a return under subsection (2)(b)(C) of this section, the parties may stipulate to a hearing as described in ORS 34.670 without the necessity of a return or a replication. If the court accepts the stipulation, it shall set the matter for hearing in an expedited manner.

(5) Issuance of the writ under subsection (2) of this section shall not bind the court with respect to any subsequent rulings related to the pleadings of the parties or the ultimate disposition of the proceeding.

(6) The court may, on its own motion, enter a judgment denying a meritless petition brought under ORS 34.310 to 34.730.

(7) As used in this section, "meritless petition" means one which, when liberally construed, fails to state a claim upon which habeas corpus relief may be granted. [Amended by 1963 c.322 §§1; 1991 c.884 §§6; 1995 c.294 §§1; 1995 c.657 §§8; 1999 c.114 §§5]

34.380 Warrant in lieu of writ; when issued. Whenever it appears by satisfactory evidence that any person is illegally imprisoned or restrained and there is good reason to believe that the person will be carried out of the state or suffer irreparable injury before the person can be relieved by the issuing of a habeas corpus, any court or judge authorized to issue such writ may issue a warrant reciting the facts, directed to any sheriff or other person therein designated, commanding the sheriff or other person to take such illegally imprisoned or restrained person and forthwith bring the person before such court or judge, to be dealt with according to law.

34.390 Order for arrest of person having custody. When the proof mentioned in ORS 34.380 is also sufficient to justify an arrest of the person having the party in custody, as for a criminal offense committed in the taking or detaining of such party, the warrant may also contain an order for the arrest of such person for such offense.

34.400 Execution of warrant; return and proceedings thereon. Any officer or person to whom a warrant issued under ORS 34.380 is directed shall execute the same by bringing the party therein named and the person who detains the party, if so commanded by the warrant, before the court or judge issuing the warrant; and thereupon the person detaining such party shall make a return in like manner, and the like proceedings shall be had thereon, as if a writ of habeas corpus had been issued in the first instance.

34.410 Criminal offense by person having custody. If the person having such party in custody is brought before the court or judge as for a criminal offense, the person shall be examined, committed, released or discharged by the court or judge in like manner as in other criminal cases of like nature. [Amended by 1973 c.836 §§324]

34.420 [Repealed by 1991 c.884 §§1 (34.421 enacted in lieu of 34.420)]

34.421 Contents of writ. The writ shall require the defendant to file a return, at a specified time and place, that states the time and cause of plaintiff's imprisonment or restraint. The writ shall not command the defendant to produce the plaintiff before the court or judge issuing the writ, unless the court, in its discretion, so orders. The court shall consider an allegation of lack of authority, brought only under ORS 34.360, as a factor weighing in favor of requiring the defendant to produce the plaintiff at the time of the return. [1991 c.884 §§2 (enacted in lieu of 34.420)]

34.430 Defect of form; designation of persons. The writ shall not be disobeyed for any defect of form. It is sufficient:

(1) If the officer or person having the custody of the person imprisoned or restrained is designated either by name of office, if the officer or person has any, or by the own name of the officer or person, or if both such names are unknown or uncertain, the officer or person may be described by an assumed appellation; and anyone who may be served with the writ is to be deemed the officer or person to whom it was directed, although it may be directed to the officer or person by a wrong name or description, or to another person.

(2) If the person who is directed to be produced is designated by name, or if the name of the person is uncertain or unknown, the person may be described in any other way, so as to designate the person intended.

34.440 Who may serve writ; tender of fees and undertaking when service is on sheriff or other officer. (1) A writ of habeas corpus may be served by

any sheriff within the county of the sheriff, or by any other person designated in the writ in any county within the state. The service of the writ shall be deemed complete, so as to require the prisoner to be brought up before the court or judge issuing the writ under the provisions of ORS 34.370, only if:

(a) The party serving the writ tenders to the person in whose custody the prisoner may be, if such person is a sheriff or other officer, the fees allowed by law for bringing up such prisoner; and

(b) The party also enters into an undertaking to such sheriff or other officer, in a penalty double the sum for which the prisoner is detained, if the prisoner is detained for any specific sum of money, and if not, then in such a sum as the judge granting the writ directs, not exceeding \$1,000, to the effect that such person shall pay the charges for carrying back the prisoner if the prisoner is remanded, and that the prisoner will not escape, either in going to or returning from the place to which the prisoner is to be taken.

(2) If such fees are not paid, or such security is not tendered, the officer to whom the writ is directed shall make a return, in the manner required by ORS 34.540, and shall state in the return the reason why the prisoner is not produced, and thereupon the court or judge granting the writ may proceed as if the prisoner was produced. This section, except for the first sentence, does not apply to a case wherein the writ is issued on the application of the district attorney. [Amended by 1991 c.884 §§7]

34.450 Payment of charges when service is on person other than sheriff or other officer. Every court or judge allowing a writ of habeas corpus, directed to a person other than a sheriff or other officer, may require, in order to render the service effectual, that the charges of producing the party be paid by the applicant; and in such case the court or judge shall, in the order allowing the writ, specify the amount of such charges, which shall not exceed the fees allowed by law to sheriffs for similar services.

34.460 Manner of service. The writ of habeas corpus may be served by delivery of the original to the officer or person to whom it is directed, or if the officer or person cannot be found, by leaving it at the jail or other place in which the party is imprisoned or restrained, with any under officer or other person having charge for the time of such party.

34.470 Service when officer or other person hides or refuses admittance. If the officer or person on whom the writ ought to be served hides from the person attempting to make service, or refuses admittance to the person attempting to make service, it may be served by affixing it in some conspicuous place on the outside, either of the dwelling house of the officer or person or the jail or other place where the party is confined. [Amended by 1987 c.158 §§5]

34.480 Proof of service. The proof of service of the writ shall be the same as in the service of a summons, except that the same shall be indorsed upon a copy of the writ made by the officer or person serving it, and returned to the clerk who issued the writ.

34.490 Duty to obey writ. It is the duty of every sheriff or other officer upon whom a writ of habeas corpus is served, whether such writ is directed to the sheriff or officer or not, upon payment or tender of the fees allowed by law, and the delivery or tender of the undertaking described in ORS 34.440, to obey and return the writ according to the exigency thereof; and it is the duty of every other person upon whom the writ is served, having the custody of the person for whose benefit it is issued, to obey and return it in like manner, without requiring the payment of any fees, unless the payment of such fees has been required by the court or judge allowing such writ.

34.500 When return must be made. If the writ is returnable at a certain time, the return shall be made at the time and place specified therein; if it is returnable forthwith, and the place of return is within 20 miles of the place of service, the return must be made within 24 hours, and the same time is allowed for every additional 20 miles.

34.510 [Repealed by 1991 c.884 §§10]

34.520 Sickness of person. Whenever, from the sickness or infirmity of the party, the party cannot, without danger, be produced, the officer or person in whose custody the party is may state that fact in the return to the writ, and if satisfied of the truth of the allegation, and the return is otherwise sufficient, the court or judge shall proceed to decide on the return, and to dispose of the matter, the same as if the party had been produced.

34.530 Requiring return and production of party by order. At any time after the allowance of a writ of habeas corpus, the plaintiff therein, or the person applying therefor on behalf of the plaintiff, may give notice to the judge issuing the writ, and thereupon, if necessary to avoid delay, the judge shall by order require that the return be made and the party produced before the judge at such time and place, within the county or district, as may be convenient.

34.540 Contents of return. (1) The officer or person upon whom the writ was duly served shall state in the return, plainly and unequivocally:

(a) Whether the officer or person has the party in custody or power or under restraint, and if the officer or person has not, whether the officer or person has had the party in custody or under power or restraint at any and what time prior or subsequent to the date of the writ.

(b) If the officer or person has the party in custody or power or under restraint, the authority and true cause of such imprisonment or restraint, setting forth the same at large.

(2) If the party is detained by virtue of any writ, warrant or other written authority, a copy thereof shall be annexed to the return, and the original shall be produced, and exhibited on the return of the writ, to the court or judge before whom the writ is returnable.

(3) If the person upon whom the writ was served has had the party in power or custody or under restraint at any time prior or subsequent to the date of the writ, but has transferred such custody or restraint to another, the return shall state particularly to whom, at what time, for what cause, and by what authority the transfer took place.

(4) The return shall be signed by the person making the same, and except where the person is a sworn public officer, and makes the return in official capacity, it shall be verified by oath.

34.550 Warrant in case of refusal or neglect to obey writ. If the person upon whom the writ was duly served refuses or neglects to obey the same by producing the party named in the writ and making a full and explicit return thereto within the time required, and no sufficient excuse is shown therefor, the court or judge before whom the writ was made returnable shall, upon due proof of the service thereof, forthwith issue a warrant against such person, directed to any sheriff in this state, commanding the sheriff forthwith to apprehend such person and bring the person immediately before such court or judge; and on the person being so brought, the person shall be committed to close custody in the jail of the county in which such judge shall be until the person makes return to the writ and complies with any order made in relation to the party for whose relief the writ was issued.

34.560 Failure of sheriff to return writ. If a sheriff neglects to return the writ, the warrant may be directed to any other person to be designated therein, who shall have full power to execute the same, and such sheriff, upon being brought up, may be committed to the jail of any county other than the county over which the sheriff has jurisdiction. [Amended by 1965 c.221 §§12; 1987 c.158 §§6]

34.570 Precept commanding bringing of prisoner. The court or judge issuing the warrant may also, at the same time or afterwards, issue a precept to the

person to whom the warrant is directed, commanding the person to bring forthwith before such court or judge the party for whose benefit the writ was allowed, who shall thereafter remain in the custody of such person until discharged or remanded.

34.580 Inquiry into cause of imprisonment. The court or judge before whom the party is brought on the writ shall, immediately after the return thereof, proceed to examine into the facts contained in the return, and into the cause of the imprisonment or restraint of such party.

34.590 Discharge when no legal cause for restraint is shown. If no legal cause is shown for the imprisonment or restraint, or for the continuation thereof, the court or judge shall discharge such party from the custody or restraint under which the person is held.

34.600 When party to be remanded. It shall be the duty of the court or judge forthwith to remand such party if it appears that the party is legally detained in custody, either:

- (1) By virtue of process issued by any court, or judge or commissioner or any other officer thereof, of the United States, in a case where such court, or judge or officer thereof, has exclusive jurisdiction; or,
- (2) By virtue of the judgment of any court, or of any execution issued upon such judgment; or,
- (3) For any contempt, specially and plainly charged in the commitment, by some court, officer or body having authority to commit for the contempt so charged; and,
- (4) That the time during which such party may legally be detained has not expired. [Amended by 2003 c.576 §§314]

34.610 Grounds for discharge of prisoner in custody under order or civil process. If it appears on the return that the prisoner is in custody by virtue of an order or civil process of any court legally constituted, or issued by an officer in the course of judicial proceedings before the officer, authorized by law, such prisoner shall be discharged only if one of the following cases exists:

- (1) The jurisdiction of the court or officer has been exceeded, either as to matter, place, sum or person.
- (2) The original imprisonment was lawful, yet by some act, omission or event which has taken place afterwards, the party has become entitled to be discharged.
- (3) The order or process is defective in some matter of substance required by law, rendering the same void.
- (4) The order or process, though in proper form, has been issued in a case not allowed by law.
- (5) The person having the custody of the prisoner under such order or process is not the person empowered by law to detain the prisoner.
- (6) The order or process is not authorized by any judgment of any court, nor by any provision of law. [Amended by 2003 c.576 §§315]

34.620 Inquiry into legality of certain judgments and process not permitted. No court or judge, on the return of a writ of habeas corpus, has power to inquire into the legality or justice of any order, judgment or process specified in ORS 34.330, nor into the justice, propriety or legality of any commitment for a contempt made by a court, officer or body, according to law, and charged in such commitment, as provided by law.

34.630 Proceedings where commitment for criminal offense is legal, or party probably is guilty. If it appears that the party has legally been committed for a criminal offense, or if the party appears by the testimony offered with the return, or upon the hearing thereof, probably to be guilty of such offense, although the commitment is irregular, the party shall forthwith be remanded to the custody or placed under the restraint from which the party was taken, if the officer or person under whose custody or restraint the party was, is legally entitled thereto; if not so entitled, the party shall be committed to the custody of the officer or person so entitled.

34.640 Custody of party pending proceedings. Until judgment is given upon the return, the party may either be committed to the custody of the sheriff of the county, or placed in such care or custody as age and other circumstances may require.

34.650 Notice to third persons. When it appears from the return that the party named therein is in custody on an order or process under which another person has an interest in continuing imprisonment or restraint of the party, no order shall be made for discharge of the party until it shall appear that the party so interested, or the attorney of the party so interested has had notice of the time and place at which the writ has been made returnable.

34.660 Notice to district attorney. When it appears from the return that the party is imprisoned or restrained on a criminal accusation, the court or judge shall make no order for the discharge of the party until notice of the return is given to the district attorney of the county where the party is imprisoned or restrained.

34.670 Replication following return; hearing. The plaintiff in the proceeding, on the return of the writ, may, by replication, signed as in an action, controvert any of the material facts set forth in the return, or the plaintiff may allege therein any fact to show, either that imprisonment or restraint of the plaintiff is unlawful, or that the plaintiff is entitled to discharge. Thereupon the court or judge shall proceed in a summary way to hear such evidence as may be produced in support of or against the imprisonment or restraint, and to dispose of the party as the law and justice of the case may require. [Amended by 1979 c.284 §§73; 2005 c.22 §§28]

34.680 Motion to deny petition; motion to strike; controverting replication; time to plead; construction and effect of pleadings. (1) The defendant may, before the writ issues, move to deny the petition on the grounds that the petition fails to state a claim for habeas corpus relief. The defendant may, at any time after the writ issues, move to dismiss the writ on the grounds that the pleadings, including the petition, the return, the replication, if any, and any supporting evidence, demonstrate that plaintiff has failed to state or establish a claim for habeas corpus relief.

(2) The plaintiff may move to strike the return or any allegation or defense in the return. The defendant may move to strike the replication or any new matter in the replication, or by proof controvert the same, as upon a direct denial or avoidance.

(3) The return and replication shall be made within such time as the court or judge shall direct, and the petition, return and replication shall be construed and have the same effect as in an action. [Amended by 1979 c.284 §§74; 1991 c.884 §§8]

34.690 Requiring production of person after writ issued. The court or judge before whom the writ is returnable may, before final decision, issue a precept to the officer or other person to whom the writ is directed, requiring the production of the person. [Amended by 1991 c.884 §§9]

34.695 Conduct of hearing. If the matter proceeds to an evidentiary hearing, as described in ORS 34.670, the court shall decide the issues raised in the pleadings and may receive proof by affidavits, depositions, oral testimony or other competent evidence. [1991 c.884 §§12]

34.700 Judgment; liability for obedience to judgment; payment of attorney fees. (1) If it appears that the party detained is imprisoned or restrained illegally, judgment shall be given that the party be discharged forthwith; otherwise, judgment shall be given that the proceeding be dismissed and the party

remanded. No officer or other person is liable to any action or proceeding for obeying such judgment of discharge.

(2) The court shall include in the judgment an order that the defendant pay the attorney fees incurred by the petition, not to exceed \$100, if:

(a) The court enters a judgment requiring that the plaintiff be discharged; and

(b) The court finds that the allegations or defenses in the return were frivolous. [Amended by 1995 c.657 §§9; 1999 c.114 §§6]

34.710 Appeal; conclusiveness of judgment. Any party to a proceeding by habeas corpus, including the state when the district attorney appears therein, may appeal from the judgment of the court refusing to allow such writ or any judgment therein, either in term time or vacation, in like manner and with like effect as in an action. No question once finally determined upon a proceeding by habeas corpus shall be reexamined upon another proceeding of the same kind. [Amended by 2003 c.576 §§235]

34.712 Summary affirmation of judgment on appeal. In reviewing the judgment of any court under ORS 34.310 to 34.730, the Court of Appeals, on its own motion or on the motion of the defendant, may summarily affirm, without oral argument, the judgment after submission of the appellant's brief and without submission of the defendant's brief if the court finds that no substantial question of law is presented by the appeal. Notwithstanding ORS 2.570, the Chief Judge of the Court of Appeals may deny or, if the plaintiff does not oppose the motion, grant a defendant's motion for summary affirmation. A dismissal of appeal under this section constitutes a decision upon the merits of the appeal. [1995 c.294 §§3; 1999 c.114 §§7]

34.720 Imprisonment after discharge. A person who has been finally discharged upon a proceeding by habeas corpus may not again be imprisoned, restrained or kept in custody for the same cause. A person is not deemed to be imprisoned, restrained or kept in custody for the same cause if:

(1) The person has been discharged from a commitment on a criminal charge, and afterwards is committed for the same offense by the legal order or process of the court wherein the person is bound by a release agreement or has deposited security, or in which the person is indicted or convicted for the same offense;

(2) After a judgment of discharge for a defect of evidence or for a material defect in the commitment, in a criminal case, the party again is arrested on sufficient evidence, and committed by legal process for the same offense;

(3) In a civil action or suit, the party has been discharged for illegality in the judgment or process, and afterwards is imprisoned for the same cause of action or suit; or

(4) In a civil action or suit, the person has been discharged from commitment on a writ of arrest, and afterwards is committed on execution, in the same action or suit, or on a writ of arrest in another action or suit, after the dismissal of the first one. [Amended by 1973 c.836 §§325; 2003 c.14 §§17; 2003 c.576 §§316]

34.730 Forfeiture for refusing copy of order or process. Any officer or other person refusing to deliver a copy of any order, warrant, process or other authority by which the officer or person detains any person, to anyone who demands a copy, and tenders the fees therefor, shall forfeit \$200 to the person so detained.

AMENDMENT OF PETITION OR ACTION TO SEEK PROPER REMEDY

34.740 Amendment of petition or action against public body when wrong remedy sought; effect of amendment on time limitations; attorney fees. (1) A circuit court shall allow a person to amend a petition or action in the manner provided by this section if:

(a) The person seeks relief against a public body, as defined in ORS 192.410;

(b) The person incorrectly filed a petition for a writ of review, a petition for a writ of mandamus or an action for declaratory judgment; and

(c) The correct remedy of the person is a petition for a writ of review, a petition for a writ of mandamus or an action for declaratory judgment.

(2) If a petition or action is amended under this section, the petition or action is not subject to dismissal by reason of not having been commenced within the time otherwise allowed by law if the reason that the person filed the wrong petition or action was either:

(a) The person relied on a reasonable interpretation of the law relating to the correct remedy; or

(b) The public body that is the respondent or defendant in the proceeding gave misleading information to the person about the proper remedy, the person relied in good faith on the information provided by the public body and by reason of that reliance the person sought the wrong remedy.

(3) A circuit court shall order a public body, as defined in ORS 192.410, to pay reasonable attorney fees incurred by any person in filing a petition for a writ of review, a petition for a writ of mandamus or an action for declaratory judgment seeking relief from the public body if:

(a) The court determines that the person has filed the wrong petition or action, and the person subsequently amends the pleading in the manner provided by subsection (1) of this section;

(b) The public body that is the respondent or defendant in the proceeding gave information to the person with the intent to mislead the person as to the proper remedy or gave information to the person, with a reckless disregard for the truth or falsity of the information, about the proper remedy; and

(c) The person relied in good faith on the information provided by the public body, and by reason of that reliance the person sought the wrong remedy. [2001 c.561 §§2]

Note: 34.740 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 34 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

CERTAIN WRITS ABOLISHED

34.810 Scire facias and quo warranto. The writ of scire facias, the writ of quo warranto, and proceedings by information in the nature of quo warranto are abolished, and the remedies heretofore obtainable under those forms may be obtained by action in the mode prescribed in ORS 30.510 to 30.640.

34.820 [Repealed 1981 c.898 §§53]

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

SID# _____
Plaintiff,
vs.
_____, Superintendent,
(Prison) _____
Defendant.

) Case No. _____
)
) AFFIDAVIT IN SUPPORT OF
) DISQUALIFICATION OF JUDGE
)
) HABEAS CORPUS
)
)
)

STATE OF OREGON)
) ss.
County of _____)

I, _____, declare that the following facts are true and correct
to the best of my knowledge and belief:

1. I am the plaintiff in the above-entitled action, and file my petition for habeas corpus with this affidavit.
2. Pursuant to ORS 14.260, I believe I cannot have a fair and impartial trial or hearing before Judge _____.

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3. This affidavit is true and accurate to the best of my knowledge. It is made in good faith, supported by evidence and the law, and is not made for the purposes of unnecessary delay.

DATED this _____ day of _____, 20_____.

Signature of Plaintiff
SID# _____
Correctional Institution:

SUBSCRIBED AND SWORN to before me this ____ day _____, 2020.

Notary Public for Oregon
My commission expires: _____

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

SID# _____,
Plaintiff,
vs.
_____, Superintendent,
(Prison) _____
Defendant.

) Case No.
)
) MOTION FOR DISQUALIFICATION
) OF JUDGE
)
) HABEAS CORPUS
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MOTION FOR CHANGE OF JUDGE – ORS 14.250

Now comes plaintiff, and moves this Court for an order disqualifying Judge
_____ in the above-entitled action for the reason that “any party or
attorney believes that such party or attorney cannot have a fair and impartial trial or
hearing before such judge.” ORS 14.250. This motion is supported by the affidavit of
plaintiff attached and incorporated by this reference herein.

DATED _____ day of _____ 2020.

Signature of Plaintiff
SID# _____
Correctional Institution:

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

SID# _____,
Plaintiff,
vs.
_____, Superintendent,
(Prison) _____
Defendant.

) Case No.
) MOTION FOR DISQUALIFICATION
) OF JUDGE
) HABEAS CORPUS

MOTION FOR CHANGE OF JUDGE – ORS 14.250

Now comes plaintiff, and moves this Court for an order disqualifying Judge _____ in the above-entitled action for the reason that “any party or attorney believes that such party or attorney cannot have a fair and impartial trial or hearing before such judge.” ORS 14.250. This motion is supported by the affidavit of plaintiff attached and incorporated by this reference herein.

DATED _____ day of _____ 2020.

Signature of Plaintiff
SID# _____
Correctional Institution:

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

SID# _____
Plaintiff,
vs.
_____, Superintendent,
(Prison) _____
Defendant.

) Case No. _____
) AFFIDAVIT IN SUPPORT OF
) DISQUALIFICATION OF JUDGE
) HABEAS CORPUS

STATE OF OREGON)
) ss.
County of _____)

I, _____, declare that the following facts are true and correct
to the best of my knowledge and belief:

1. I am the plaintiff in the above-entitled action, and file my petition for
habeas corpus with this affidavit.

2. Pursuant to ORS 14.260, I believe I cannot have a fair and impartial trial
or hearing before Judge _____.

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3. This affidavit is true and accurate to the best of my knowledge. It is made in good faith, supported by evidence and the law, and is not made for the purposes of unnecessary delay.

DATED this _____ day of _____, 20____.

Signature of Plaintiff
SID# _____
Correctional Institution:

SUBSCRIBED AND SWORN to before me this _____ day _____, 2020.

Notary Public for Oregon
My commission expires: _____

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

SID# _____
Plaintiff,
vs.
_____, Superintendent,
(Prison) _____
Defendant.

) Case No.
)
) PROPOSED ORDER FOR
) DISQUALIFICATION OF JUDGE
)
) HABEAS CORPUS
)
)
)

THIS MATTER comes before the Court on plaintiff's motion for an order
recusing Judge _____ from hearing the above-entitled action. The Court,
being fully advised in the premises, does hereby order the following:

GRANTED _____
DENIED _____

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CERTIFICATE OF READINESS

This proposed Order is Ready for judicial signature because:

- I provided this order by mail to the Trial Court Administrator with my pro se motion for habeas corpus and other documents.

DATED 5 May 2020.

Signature of Plaintiff
SID# _____
Correctional Institution:

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CERTIFICATE OF SERVICE

I, Tara Herivel, hereby certify that on this date I have made service of the attached MOTION, DECLARATION AND ORDER FOR MOTION FOR DISQUALIFICATION OF JUDGE, on the Respondent/Defendant by U.S. mailing a true copy thereof, in compliance with the "Mailbox Rule" for filing and mailing legal documents, certified by me as the Plaintiff, upon the following parties:

Trial Court Administrator
_____ County Courthouse

DATED this _____ day of _____, 2020.

Signature of Plaintiff
SID# _____
Correctional Institution:

Oregon Trial Court Administrators by County

Baker County Courthouse
1995 Third St, Suite 220
Baker City, OR 97814

Benton County Courthouse
PO Box 1870
Corvallis, OR 97339

Clackamas County Courthouse
807 Main St
Oregon City, OR 97045

Clatsop County Courthouse
PO Box 835
Astoria, OR 97103

Columbia County Courthouse
230 Strand St
St. Helens, OR 97051

Coos County Courthouse
250 N. Baxter
Coquille, OR 97423

Crook County Courthouse
300 NE Third St
Prineville, OR 97754

Curry County Courthouse
94235 Moore St, Suite 200
Gold Beach, OR 97444

Deschutes County Courthouse
1100 NW Bond
Bend, OR 97703

Douglas County Courthouse
1036 SE Douglas Ave, Room 201
Justice Building
Roseburg, OR 97470

Gilliam County Courthouse
PO Box 427
Condon, OR 97823

Grant County Courthouse
PO Box 159
Canyon City, OR 97820

Harney County Courthouse
450 N. Buena Vista #16
Burns, OR 97720

Hood River County Courthouse
309 State St
Hood River, OR 97031

Jefferson County Courthouse
129 SW E St, Suite 101
Madras, OR 97741

Josephine County Courthouse
500 NW 6th Dept 17
Grants Pass, OR 97526

Jackson County Justice Building
100 S. Oakdale
Medford, OR 97501

Klamath County Courthouse
316 Main St
Klamath Falls, OR 97601

Lake County Courthouse
513 Center St
Lakeview, OR 97630

Lane County Courthouse
125 E 8th Ave
Eugene, OR 97401

Lincoln County Courthouse
PO Box 100
Newport, OR 97365

Linn County Courthouse
PO Box 1749
Albany, OR 97321

Malheur County Courthouse
251 "B" St W #3
Vale, OR 97918

Marion County Courthouse
PO Box 12869
Salem, OR 97309

Morrow County Courthouse
PO Box 609
Heppner, OR 97836

Multnomah County Courthouse
1021 SW Fourth
Portland, OR 97204

Polk County Courthouse
850 Main St
Dallas, OR 97338

Sherman County Courthouse
PO Box 402
Moro, OR 97039

Tillamook County Courthouse
201 Laurel Ave
Tillamook, OR 97141

Umatilla County Courthouse
216 SE 4th St
Pendleton, OR 97801

Union County Courthouse
1105 "K" Ave
La Grande, OR 97850

Wallowa County Courthouse
101 S. River St Room 204
Enterprise, OR 97828

Wasco County Courthouse
PO Box 1400
The Dalles, OR 97058

Washington County Courthouse
150 N First Ave
Hillsboro, OR 97124

Wheeler County Courthouse
PO Box 308
Fossil, OR 97830

Yamhill County Courthouse
535 NE Fifth St Room 133
McMinnville, OR 97128