

Recognition, Enforcement & Prosecution of Protection Orders

Oregon-Issued and “Foreign” Restraining Orders

Oregon Family Abuse Prevention Act (FAPA) Restraining Order:

1. **Statute Number:** ORS 107.700 through 107.735
2. **Who may petition for an RO:** A person who has a “family/household” relationship with the Respondent. (ORS 107.705; very similar to “family/household for purposes of domestic violence under ORS 135.230)
3. **How:** A petitioner must file an affidavit with the court in the county where either the Petitioner or the Respondent resides (ORS 107.728)
4. **What does the Petitioner have to allege to get an RO:** (ORS 107.710(1))
 - a. There is a “family/household” relationship w/ the Respondent;
 - b. “Abuse” has occurred (same definition as in ORS 135.230);
 - c. The “abuse” happened within 180 days of the request for the RO (w/ limited exceptions)
 - d. The Petitioner is in imminent danger of further abuse by the Respondent; *and*
 - e. Respondent represents a credible threat to the physical safety of the Petitioner or Petitioner’s child.
5. **Standard of Proof to RECEIVE RO:** Preponderance of the Evidence (ORS 107.710(2))
6. **Duration of RO:** One year (ORS 107.718(3)), but can be renewed prior to expiration

Other Oregon Restraining Orders/ Contempt Charges:

1. Sexual Abuse Protection Order (SAPO) – ORS 163.760 through 163.777
2. Elderly Persons/Persons with Disabilities Abuse Prevention Act (EPPDAPA) – ORS 124.005 through 124.040
3. Emergency Protective Order – ORS 133.035
4. No-Contact Condition of Release Agreement – ORS 135.250; ORS 135.247; ORS 133.310(6)

NOTE:

1. **Stalking Protection Order** - ORS 163.730 through 163.755; ORS 33.866
 - a. Violation: Class A misdemeanor or Class C felony
2. **Extreme Risk Protection Order (ERPO)** – ORS 166.525 through 166.543
A court order that prevents a person who is at risk of hurting another person or of committing suicide from having or getting deadly weapons, including firearms.
 - a. Violation: Class A misdemeanor; and conviction results in additional 5 year ban on possession of firearms (ORS 166.543)

Enforcement of Violation of Restraining Order/ Contempt Statute and Rules:

All FAPA, SAPO, EPPDAPA, Release Agreement NCO violations are filed as contempt charges.

1. **Statute Numbers:** ORS 33.015 through 33.155
2. **“Contempt of Court”:** ORS 33.015(2)(d): “Disobedience of, resistance to or obstruction of the court’s authority, process, orders or judgments.”

3. **“Punitive Sanction”/ Punitive Contempt:** A sanction imposed to punish a past contempt of court; punitive contempt can include up to 6 months in jail
4. **“Procedure for imposition of punitive sanctions”:** ORS 33.065(1)
5. **Standard of Proof to impose a punitive sanction:** Beyond A Reasonable Doubt (ORS 33.065(9))
6. **Bench Trial:** There is no right to a jury trial in a contempt proceeding, but the Respondent has all other constitutional and statutory protections, including the right to appointed counsel. (ORS 33.065(6))
7. **Venue for filing RO violation/ contempt charge:** Contempt proceedings on a violation of RO may be filed in the county that issued the RO or by the circuit court for the county in which the violation occurred (ORS 107.728)
8. **Statute of Limitation to file contempt charge:** Two years (ORS 33.135)
9. **Contempt adjudications are NOT convictions:** *State v. Reynolds*, 239 Or App 313, 243 P3d 493 (2010): Defendant was found to be in contempt of a court order. A judgment reflected Defendant’s “conviction” for contempt. The Court of Appeals reversed. Contempt is not a “crime” therefore a finding of contempt is not a “conviction.” *See also, State v. Lam*, 176 Or App 149, 158 (2001): Contempt is not a crime, “rather, it’s a unique and inherent power of the court to ensure compliance with its orders.”

Mandatory Arrest of Violation of Oregon-Issued Restraining Orders:

1. **Mandatory Arrest on Violation of Oregon Restraining Order ORS 133.310(3):** a peace officer shall arrest and take into custody where there is PC to believe that 1) there exists and order restraining the person, 2) a true copy of the order and proof of service on the person has been filed, 3) the person to be arrested has violated the terms of that order (includes FAPA, stalking, SAPO, Emergency Order).
2. **Mandatory Arrest on Violation of Release Agreement NCO ORS 133.310(6):** a peace officer shall arrest and take into custody a person without a warrant if the peace officer has probable cause to believe the person has been charged with an offense and is presently released as to that charge under ORS 135.230 to 135.290 (charged with and released with a DV Offense).
3. **Liability of Peace Officer Making Arrest on Oregon Order ORS 133.315(1):** No peace officer shall be held criminally or civilly liable for making an arrest provided that officer acts in good faith and without malice

“Foreign” Restraining Orders (Including Tribal Orders)

1. **Statute Numbers:** ORS 24.105 through 24.175; 18 USC 2265
2. **Full Faith and Credit:** 18 USC 2265(a) mandates that all qualifying foreign protection orders shall be given full faith and credit by this state and be enforced by the court and law enforcement personnel of this state as if it were an order of the State of Oregon. Ex parte orders and final orders both qualify.
3. **“Restraining Order”:** means an injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against another person; sexual violence; contact or communication with another person; or physical proximity to another person.
4. **What is a “Foreign Restraining Order”:** ORS 24.190: a restraining order that is a foreign judgment as defined by ORS 24.105.
 - a. **“Foreign Judgment”:** means any judgment, decree or order of a court of the United States or of any other court which is entitled to a full faith and credit in this state (State, Indian tribe, or territory); and any judgment, decree or order of a tribal court of a federally recognized Indian tribe, except when another Oregon statute provides a different process to enforce a tribal judgment, decree or order or as provided in ORS 426.180.
 - b. **Tribal Protective Orders:** are “Foreign Judgments” under 18 USC 2265(a), and are to be treated the same way as any other “foreign restraining order.”
5. **Qualifying Foreign Protection Orders:** A protective order issued by a state, tribal or territorial court is considered a qualifying foreign protective order entitled to full faith and credit under 18 USC 2265(b), if
 - a. such court has jurisdiction over the parties and matter under the law of the state, Indian tribe or territory and
 - b. that the issuing jurisdiction provided the respondent reasonable notice and opportunity to be heard in a manner sufficient to protect the person’s right to due process
 - c. may not be an automatic dual order unless both parties separately petition the court for protective order against the other

Enforcement of Foreign Restraining Orders in Oregon

1. **No registration of foreign order required:** Any protection order that qualifies under full faith and credit is valid upon arrival in the state, and does not need to be registered as a prerequisite to enforcement.
2. **Validity in Oregon:** any protection order that qualifies under full faith and credit is valid immediately upon arrival in this state. *The protection order is enforceable as an Oregon order without the necessity of filing and continues to be enforceable as an Oregon order without any further action by the protected person.*
3. **Affirmative Defenses:** Unless otherwise expressly provided in the order, issues of non-enforceability regarding a “qualifying order” are affirmative defenses in an action seeking enforcement of the order. ORS 24.190(2)(c). Officers are to conduct a facial validity test.
4. **Optional Registration of Foreign Order by Petitioner:**
 - a. **Through County Sheriff ORS 24.190(3):** A person *may* present copy of the foreign restraining order to a county sheriff for entry into LEDS. The County Sheriff shall promptly verify the validity of the foreign order and that the person restrained has been either personally serviced or received actual notice, and then enter the order into LEDS/NCIC.

- i. “Personal service” and “actual notice” for this purpose include alternative forms of service or notice that are permitted by the issuing jurisdiction to constitute service or notice.
 - ii. Entry into LEDS constitutes notice to all LE agencies of the existence of the restraining order. Law enforcement agencies shall establish procedures adequate to ensure that an officer at the scene of an alleged violation of the order may be informed of the existence and terms of the order. The order is fully enforceable as an Oregon order in any county or tribal land in this state.
- b. **Through Circuit Court ORS 24.190(6):** A protected person, or person on their behalf, *may* file a certified copy of the order and proof of service in the office of the clerk of any circuit court of any county of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of the circuit court in which the foreign judgment is filed, and may be enforced or satisfied in like manner. (The Court may not collect a filing fee for a filing under this section)

Mandatory Arrest of Violation of Foreign Restraining Orders:

1. **Mandatory Arrest on Violation of Foreign Restraining Order ORS 133.310(4)/Copy of Order:** peace officer shall arrest and take into custody if
 - a. a person protected by a foreign restraining order presents a physical or electronic of the foreign restraining order to the officer and
 - b. represents to the officer that the order supplied is the most recent order in effect between the parties, and that the person restrained by the order has been personally served with a copy of the order or has actual notice of the order; and
 - c. the officer has PC to believe that the person to be arrested has violated the terms of the foreign restraining order
2. **Mandatory Arrest on Violation of Foreign Restraining Order ORS 133.310(5)/ Entered in LEDS:** peace officer shall arrest and take into custody a person without a warrant if 1) a foreign restraining order (as defined by ORS 24.290) has been filed with a court or has been entered into LEDS/NCIC. **Entry into LEDS/NCIC is notice of the existence of the order, no additional confirmation/ verification is required.*
3. **Liability of Peace Officer Making Arrest on Foreign Order ORS 133.315(2):** No peace officer shall be criminally or civilly liable for any arrest made if the officer reasonably believes that 1) the document or writing provided to officer is an accurate copy of a foreign restraining order and is the most recent order in effect between the parties and that 2) the person restrained by the order has been personally served with a copy of the order or has actual notice of the order.
4. **Immunity for Good Faith Action ORS 24.190(7):** This state or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of the court or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act arising out of the registration, entry or enforcement of a foreign restraining order or the detention or arrest of an alleged violator of a foreign restraining order if the act was done in good faith and without malice in an effort to comply with state and federal law.