

**OREGON STATE BAR
LEGISLATIVE PROPOSAL
Part I – Legislative Summary**

Re: Enforcement of Tribal Judgments

Submitted by: Indian Law Section

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1. Does this amend current law or program? Yes No Specify

This bill would add new provisions to ORS Chapters 24 and 133.

2. Problem Presented:

Current statutes do not clearly provide that Oregon courts should provide full faith and credit to orders and judgment issued by tribal courts. This proposal would add new provisions to Chapter 24 and Chapter 133 to provide for enforcement of orders and judgments issued by courts of federally recognized Indian tribes.

3. Solution:

The solution is to add language to ORS 24.105 and ORS 24.115 to provide for enforceability of tribal court orders and judgments and to amend ORS Chapters 24 and 133 to provide for enforcement of restraining orders.

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LEGISLATIVE PROPOSAL
Part II – Legislative Language**

Please provide your legislative language below:

Part 1 - Enforceability of Tribal Court Orders and Judgments

Add the following new provisions to ORS 24.105 and ORS 24.115 as appropriate.

(1) Procedure - A party seeking enforcement of an order or judgment of the tribal court of any federally recognized Indian tribe shall proceed by petition or, in a pending action, by motion. The petitioner or moving party shall serve a copy of the petition or motion on each of the parties to the tribal court proceeding in which that judgment or order was entered. No fee shall be charged to petitioners or moving parties to initiate the recognition of a tribal court order or judgment, and no fee shall be charged to a party responding to such a petition or motion. The court receiving the petition or motion may determine whether to hold a hearing and what pleadings or briefs should be filed, and when. The court shall confirm that notice has been made to all interested parties, consistent with the Uniform Rules of Procedure governing Oregon judicial proceedings, before determining the matter submitted to it by petition or motion.

(2) Enforceability and Exceptions – Unless a party subject to the order or judgment the petitioner or movant seeks to enforce demonstrates any of the following, Oregon courts shall recognize and enforce the orders and judgments of tribal courts of record for federally recognized Indian tribes:

- a. the order or judgment is invalid on its face or no longer remains in effect,
- b. the tribal court lacked personal or subject matter jurisdiction,
- c. the affected party was not afforded due process rights,
- d. the order or judgment was obtained by fraud, duress or coercion, or
- e. the tribal court does not recognize and enforce orders, judgments and decrees of the courts of this state in reciprocal fashion.

Part 2 – Recognition and Enforcement of Foreign Restraining Orders

Amend provisions to ORS 24.190, ORS 133.310, and ORS 133.315 as appropriate.

The current statutory language of ORS 24.190, ORS 133.310, and ORS 133.315 is included below with the following changes/ additional language:

- Proposed additions are **bolded**.
- Proposed deletions are *[italized]*.
- All additional issues referenced in comments **highlighted**.
- Comments and explanation of proposed language are **included in red**.

24.190. Foreign restraining orders

(1) For the purposes of this section:

(a) “Foreign restraining order” means a restraining order that is a foreign judgment as defined by [ORS 24.105](#).

(b) (A) “Restraining order” means an injunction or other order issued for the purpose of preventing:

(i) Violent or threatening acts or harassment against another person;

(ii) Contact or communication with another person; or

(iii) Physical proximity to another person.

(B) “Restraining order” includes temporary and final orders, *[other than support or child custody orders,]* issued by a civil or criminal court regardless of whether the order was obtained by filing an independent action or as a pendente lite order in another proceeding. However, for a civil order to be considered a restraining order, the civil order must have been issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection.

Comments: “other than support or child custody orders” in the Oregon statute is not in compliance with federal statute. 18 USC 2266(5): (5) Protection order .— The term “protection order” includes— (A) any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and (B) any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.

(2) (a) Except as otherwise provided in paragraph (b) of this subsection, immediately upon the arrival in this state of a person protected by a foreign restraining order, the foreign restraining 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.

(b) A foreign restraining order is not enforceable as an Oregon order if:

(A) The person restrained by the order shows that:

(i) The court that issued the order lacked jurisdiction over the subject matter or lacked personal jurisdiction over the person restrained by the order; or

(ii) The person restrained by the order was not given reasonable notice and an opportunity to be heard under the law of the jurisdiction in which the order was issued; or

(B) The foreign restraining order was issued against a person who had petitioned for a restraining order unless:

(i) The person protected by the foreign restraining order filed a separate petition seeking the restraining order; and

(ii) The court issuing the foreign restraining order made specific findings that the person was entitled to the order.

(c) Unless clearly included on the face of the order, issues of non-enforceability in section b are affirmative defenses in an action seeking enforcement of the order

Comments: Issues of jurisdiction or specific information re: notice and opportunity to be heard may not be readily available to enforcing parties- but should not be a reason to deny enforcement. A foreign order should be considered facially valid based on 1) issued by a court, 2) identifies the protected party and the respondent, 3) is in effect, and 4) has conditions that are intended to prevent violent/threatening acts or harassment, contact or communication of physical proximity.

If there is something that on the FACE of the order that makes it a dual order- then it should not be enforceable. But if the order does not clearly state that it is a dual order, or there is a question of jurisdiction, notice, or opportunity to be heard- those issues should be affirmative defenses in an action seeking enforcement.

(3) (a) A person protected by a foreign restraining **or a person or entity on their behalf**, order may present a **true copy** of the order to a county sheriff for entry into the Law Enforcement Data System maintained by the Department of State Police. Subject to paragraph (b) of this subsection, the county sheriff shall enter the order into the Law Enforcement Data System if the person certifies that the order is the most recent order in effect between the parties and provides proof of service or other written certification that the person restrained by the order has been personally served with a copy of the order or has **actual notice** of the order. Entry into the Law Enforcement Data System constitutes notice to all law enforcement 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.

Comments: The optional filing of a foreign restraining order should be allowed by not just the actual protected party, but also another person (advocate or attorney) or entity (tribal court). The reason for "a person or entity on their behalf" is so that advocates or tribal personal representatives can file with the court/sheriff rather than a tribal protected party needing to go him/herself. Allowing an entity to file with the sheriff's office would allow for MOUs with tribes/tribal court that want to provide data to sheriff's offices for entry. The reason for "on their behalf" is that protected parties may not want to have an order filed- so there should be a mechanism to assure that it is at their request.

Filing with the sheriff in section (3) requires a "true copy" while filing with the court in section (6) requires a "certified copy". There may be a benefit of making these the same to prevent confusion on the part of the protected party.

Section (3) requires that the protected party certify to the sheriff that the respondent has been "personally served with a copy of the order or has actual notice of the order." In Section 6 below, it requires that the protected party provide the court with "proof of service"- these two requirements are not consistent with each other. Furthermore, there is nothing in these statutes that define "actual notice" for purposes of a foreign protection order. Since it allows for personal service OR has actual notice, it appears that it does not require actual notice. Adding a definition of "actual notice" similar to that in ORS 419B.824 or language from ORCP 7 would be helpful to identifying what qualifies as "actual notice."

(b) The Department of State Police shall specify information that is required for a foreign restraining order to be entered into the Law Enforcement Data System.

(c) At the time a county sheriff enters an order into the Law Enforcement Data System under paragraph (a) of this subsection, the sheriff shall also enter the order into the databases of the National Crime Information Center of the United States Department of Justice.

(d) Entry into the Law Enforcement Data System or the National Crime Information Center constitutes notice to all law enforcement agencies of the existence of the order.

Comments: This language exists in ORS 107.720 in reference to enforcement of FAPA restraining orders in Oregon. I have not found similar language anywhere else in reference specifically to foreign protection orders.

(4) Pending a contempt hearing for alleged violation of a foreign restraining order, a person arrested and taken into custody pursuant to [ORS 133.310](#) may be released as provided in [ORS 135.230](#) to [135.290](#). Unless the order provides otherwise, the security amount for release is \$5,000.

(5) [ORS 24.115](#), [24.125](#), [24.129](#), [24.135](#), [24.140](#), [24.150](#) and [24.155](#) do not apply to a foreign restraining order.

(6) A person protected by a foreign restraining order **or a person or entity 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.

Comments: See comments above re: adding the language “or a person or entity on their behalf” and comments re: “certified copy” vs “true copy” in section (3).

(7) This State or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of court, or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission was done in good faith and without malice in an effort to comply with state and federal law.

Comments: This immunity language is taken from the Uniform Law Commission language. “without malice” was added to mirror the other immunity language re: enforcement of protection orders under Oregon law (ORS 133.315).

There has been concern expressed by sheriff’s offices, county counsel, court clerks that once an order is entered into LEDS pursuant to section 3 or 6 of this statute, that there is no way for them to have an ongoing check of whether the order is still valid- and there is no requirement that anyone update the court/sheriff’s office if it is dismissed or modified. This would provide a protection to them if a foreign order is entered into LEDS and it was not removed.

133.310. Arrests without warrants

(1) A peace officer may arrest a person without a warrant if the officer has probable cause to believe that the person has committed any of the following:

- (a) A felony.
- (b) A misdemeanor.
- (c) An unclassified offense for which the maximum penalty allowed by law is equal to or greater than the maximum penalty allowed for a Class C misdemeanor.
- (d) Any other crime committed in the officer's presence.

(2) A peace officer may arrest a person without a warrant when the peace officer is notified by telegraph, telephone, radio or other mode of communication by another peace officer of any state that there exists a duly issued warrant for the arrest of a person within the other peace officer's jurisdiction.

(3) A peace officer shall arrest and take into custody a person without a warrant when the peace officer has probable cause to believe that:

- (a) There exists an order issued pursuant to ORS 30.866, 107.095 (1)(c) or (d), 107.716, 107.718, 124.015, 124.020, 133.035, 163.738, 163.765, 163.767 or 419B.845 restraining the person;
- (b) A true copy of the order and proof of service on the person has been filed as required in ORS 107.720, 124.030, 133.035, 163.741, 163.773 or 419B.845; and
- (c) The person to be arrested has violated the terms of that order.

(4) A peace officer shall arrest and take into custody a person without a warrant if:

- (a) The person protected by a foreign restraining order as defined by ORS 24.190 presents a **physical or electronic** copy of the foreign restraining order to the officer and 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

Comments: Because not all petitioners choose to/ or have access to having their protective orders entered into the LEDS/ NCIC database, this arguably requires petitioners in foreign orders to carry a paper copy of their orders at all times. This is an unnecessary burden on tribal/foreign victims that is not placed on petitioners of state restraining orders. While the current statute here does not exclude electronic copies, in ORS 133.315 there is reference to "document or other writing" which is more suggestive of a physical document. Adding this language would make it clear that an electronic copy is sufficient and can be relied upon.

Section (4)(a) again references personal service or actual notice, but does not define it. See comments above regarding the inclusion of a definition of "actual notice."

- (b) The peace officer has probable cause to believe that the person to be arrested has violated the terms of the foreign restraining order.

(5) A peace officer shall arrest and take into custody a person without a warrant if:

- (a) **A person or entity on the behalf of a person protected by a foreign restraining order**, or the person protected by a foreign restraining order as defined by ORS 24.190 has filed a copy of the foreign restraining order with a court or has been identified by the officer as a party protected by a foreign restraining order entered in the Law Enforcement Data

System or in the databases of the National Crime Information Center of the United States Department of Justice; and

(b) The peace officer has probable cause to believe that the person to be arrested has violated the terms of the foreign restraining order.

Comments: See discussion above re: not just the protected person filing it- it could be the court or a representative of the protected party that files it.

(6) A peace officer shall arrest and take into custody a person without a warrant if the peace officer has probable cause to believe:

(a) The person has been charged with an offense and is presently released as to that charge under [ORS 135.230](#) to [135.290](#); and

(b) The person has failed to comply with a no contact condition of the release agreement.

133.315. Liability of peace officer for making arrest

(1) No peace officer shall be held criminally or civilly liable for making an arrest pursuant to [ORS 133.055 \(2\)](#) or [133.310 \(3\)](#) or [\(5\)](#) provided the peace officer acts in good faith and without malice.

(2) No peace officer shall be criminally or civilly liable for any arrest made under [ORS 133.310 \(4\)](#) if the officer reasonably believes that:

(a) A **physical or electronic** document or other writing supplied to the officer under [ORS 133.310 \(4\)](#) is an accurate copy of a foreign restraining order as defined by [ORS 24.190](#) and is the most recent order in effect between the parties; and

(b) The person restrained by the order has been personally served with a copy of the order or has actual notice of the order.

Comments: Make it clear that electronic documents are sufficient, creating consistency with the proposed language in 133.310 above.