



Oregon Department of Justice

1162 Court St. NE, Salem, Oregon 97301

U.S. Attorney's Office—District of Oregon

1000 SW Third Ave. Suite 600, Portland, Oregon 97204

January 2020

FROM: Oregon Attorney General Ellen Rosenblum and United States Attorney Billy J. Williams

RE: Official Guidance for Enforcement of Tribal Protection Orders/ "Foreign Restraining Orders"

ATTN: All State, Local, and Tribal Law Enforcement Agencies, Oregon District Attorneys, Oregon County Counsel, and Public Safety Partner

The enforcement of protection or restraining orders is a critical component of protecting victims of domestic violence. Petitioners of foreign restraining orders, including tribal protection orders, are entitled to the same protections as petitioners of Oregon protection orders. It is through your dedication, communication, and partnership with each other that we are able provide this security and protection. In support of that partnership, and ours as state and federal legal leaders in Oregon, we provide the following guidance about the enforcement of tribal protection orders. Thank you for everything you do for the safety and security of those in our State.

If you have questions or concerns about the enforcement of tribal protection orders, or other foreign restraining orders, in Oregon or if you are interested in additional training on this issue, please contact Sarah Sabri, Senior Assistant Attorney General/Domestic Violence Resource Prosecutor at the Oregon Department of Justice at (503) 934-2024 or sarah.m.sabri@doj.state.or.us, or Tim Simmons, Assistant United States Attorney/ Tribal Liaison at the United States Attorney's Office, District of Oregon at (541) 465-6740 or tim.simmons@usdoj.gov.

Executive Summary

Federal law requires that protection orders issued by other states, Indian tribes, or territories be recognized and enforced as though the order had been issued in the enforcing jurisdiction. Under Oregon law, protection orders from other states, Indian tribes, or territories are called "foreign restraining orders" and require enforcement action. State and federal law dictate that foreign restraining orders are immediately enforceable in Oregon without any requirement to file or register the order in any database or court record. Where there is probable cause to believe that a violation of a foreign restraining order has occurred, Oregon law enforcement officers **shall take into custody** a person restrained by the order when a protected party: 1) presents a copy of the foreign order to the officer and represents to the officer that the order supplied is the most recent order in effect and that the person restrained by the order has been personally served or has actual notice of the order **or** 2) where a *voluntary* entry of the order into Law Enforcement Data System (LEDS) or the National Crime Information Center of the United States Department of Justice (NCIC) establishes the existence of the foreign restraining order.

Discussion

Mandate:

All Oregon law enforcement officers are required by state and federal law to enforce protection orders that are issued by Oregon courts as well as protection orders that are issued by other states, Indian tribes, or territories. These "foreign restraining orders," as defined in ORS 24.190, must be given full faith and credit by law enforcement, prosecutors, and courts in Oregon.

Background:

The concept of full faith and credit has been in existence since the founding of the United States. Article IV, Section 1 of the U.S. Constitution states that “full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state, and the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof.” Full faith and credit ensures that when a state issues a license, court order, judgment, or other decree, it is honored in every other state.

Federal Law:

In 1994, Congress enacted the full faith and credit provisions of the Violence Against Women Act (VAWA), codified in 18 U.S.C. § 2265. This federal law directs jurisdictions to give full faith and credit to valid orders of protection issued by other jurisdictions.¹ **When a protection order is issued by any state, Indian tribe, or territory and it is violated in any other jurisdiction, it must be enforced as if the order had been issued in the enforcing jurisdiction.** VAWA further proscribes that **the order does not have to be filed, registered, or otherwise entered into any database**, including but not limited to, Law Enforcement Data System (LEDS), the National Crime Information Center of the United States Department of Justice (NCIC), or the Tribal Access Program (TAP). 18 USC § 2265(d).

Oregon Law - Entry Into LEDS/NCIC Not Required:

Tribal protection orders are included in the definition of “foreign restraining order” under ORS 24.190. In accordance with 18 USC § 2265(d), Oregon statutes also clearly state that a foreign restraining order is immediately enforceable in Oregon, without filing the order in any database or requiring any further action be taken by the protected person. ORS 24.190(2)(a). The protected party of a foreign restraining order *may* elect to file a certified copy of the order and proof of service with the circuit court of any county in Oregon. ORS 24.190(6). The protected party of a foreign restraining order also *may* elect to give a true copy of the order and proof of service or other written certification of existence of the order and actual notice to a county sheriff for entry into LEDS and NCIC. If a protected person requests this, the county sheriff *shall* enter it into LEDS and NCIC. ORS 24.190(2). Oregon statute mandates that “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.” ORS 24.190(3)(a). **Entry into LEDS/NCIC constitutes notice to all law enforcement agencies of the existence of the restraining order.**

Oregon Law - Mandatory Arrest:

Under Oregon’s mandatory arrest statutes, **a peace officer shall take a person into custody for violation of a foreign restraining order if the protected party 1) presents a copy of the foreign restraining order to the officer; 2) represents to the officer that the order supplied is the most recent order in effect between the parties; 3) represents to the officer that the person restrained by the order has been personally served or has actual notice of the order; and 4) the officer has probable cause that the condition(s) of the order have been violated.** ORS 133.310(4). In the event that a protected party has elected to file the foreign restraining order with the sheriff’s office for entry into LEDS/NCIC, the officer may rely on the database entry to establish the existence of the order. ORS 133.310(5). It is critical to understand that filing or registering a foreign order with a circuit court or sheriff’s office is not necessary for the mandatory arrest requirement to attach if a foreign restraining order has been violated. When a foreign restraining order is not in LEDS, NCIC, or TAP, officers are expected to conduct a facial validity assessment of the order.

Facial Validity Assessment:

Law enforcement should evaluate the facial validity of the document presented by the protected party to determine whether the order was issued by a court, the order has not expired, and the parties involved are the persons subject to, and protected by, the order. If facially valid, law enforcement should then determine if the terms or conditions of the

¹ 18 U.S.C. 2265 (a) “Any protection order issued ... by the court of one State, Indian tribe, or territory... shall be accorded full faith and credit by the court of another State, Indian tribe, or territory ... and enforced by the court and law enforcement personnel ... as if it were the order of the enforcing State or tribe” so long as

(b)(1) “such court has jurisdiction over the parties”

(b)(2) “reasonable notice and opportunity to be heard is given to the person against whom the order is sought”

(c) it is not a mutual or dual order unless a cross or counter petition was filed and the court made specific findings that each party was entitled to an order of protection.

protection order were violated. If violated, the mandatory arrest requirements of ORS 133.310 attach. **Law enforcement is not required to determine anything other than the facial validity of a foreign restraining order for enforcement.**

If a law enforcement officer determines that an otherwise valid foreign restraining order cannot be enforced because the person restrained by the order has not been notified or served with the order, best practice dictates that the officer should inform the person restrained by the order of the order, make a reasonable effort to serve the order, and allow the person restrained by the order a reasonable opportunity to comply with the order before enforcing it. Verbal, documented notice of the order is sufficient.

Liability:

Under Oregon law, no peace officer shall be criminally or civilly liable for an arrest made for violation of a foreign restraining order where a peace officer reasonably believes that a document or other writing provided to the officer is an accurate copy of a foreign restraining order, is the most recent order in effect between the parties, and that the person restrained by the order has been personally served or has actual notice of the order. ORS 133.315(2). Furthermore, no peace officer shall be held criminally or civilly liable for an arrest made based on a foreign restraining order that has been entered into LEADS or NCIC provided that the officer acts in good faith and without malice. ORS 133.315(1).

Venue:

Any contempt proceeding for violation of a restraining order may be conducted *either* in the court that issued the order, or by the circuit court for a county in which a violation of the foreign restraining order occurs. ORS 107.728.

Conclusion

Petitioners of foreign restraining orders, including tribal protection orders, are entitled to the same protections that are provided to petitioners of Oregon protection orders. These individuals rely on consistent enforcement for their safety. It is critical that any gaps or obstacles that prevent adequate and appropriate enforcement from happening across the state or in individual jurisdictions be addressed and resolved. It is the responsibility of each jurisdiction to assure that your agencies are affording foreign restraining orders full faith and credit.

Signed,



Ellen F. Rosenblum
Oregon Attorney General



Billy J. Williams
United States Attorney