

## Full Faith and Credit FAQs

**1. Q: What is full faith and credit (FF&C)?**

A: Full faith and credit means that public acts, records, and judicial proceedings and orders issued from one state or jurisdiction are recognized as legal and valid, and enforced, in another jurisdiction.

**2. Q: What is the state law that requires me to uphold full faith and credit?**

A: ORS 24.190. Specifically, ORS 24.190 (2) (a) states, “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.”

**3. Q: What is a “foreign restraining order”?**

A: In 1999, Oregon added ORS 24.190 defining a “foreign restraining order” includes protection orders that are issued for the purpose of preventing violent or threatening acts or harassment against another person, contact or communication with another person or physical proximity to another person by a court in the United States, another state, Indian tribe or territory. Therefore, tribal protective orders are included in Oregon’s definition of “foreign restraining order.” Under ORS 24.190 (1) (a), a “Foreign restraining order” means a restraining order that is a foreign judgment as defined by ORS 24.105.” Under 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 full faith and credit in this state.”

**4. Q: What is the federal law that requires me to uphold full faith and credit?**

A: There are two related federal laws around FF&C. The first is the United States Constitution. Article IV §1 of the Constitution is called the Full Faith and Credit Clause, which states, “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.” The full faith and credit clause ensures that when one state issues a license, court order, judgment, or any other decree, it is honored in every other state.

The second federal law around FF&C is under the Violence Against Women Act, or VAWA, codified in 1994 under 18 U.S.C. § 2265. 18 U.S.C. § 2265 states that “Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State or tribe.” We cover what subsection (b) requires under question 6.

**5. Q: What is VAWA?**

A: VAWA is the Violence Against Women Act, a landmark piece of legislation intended to improve criminal justice and community-based responses to domestic violence, dating violence, sexual assault and stalking in the United States via a variety of laws, programs, and funding. In addition, VAWA has included special provisions in the law and funding designed to protect Native women from domestic violence, dating violence, and violations of protective orders, and has worked to restore and reaffirm the inherent tribal sovereignty of tribal nations to protect their citizens from violence. In the 2013, VAWA added a provision that affirmed the inherent sovereign authority of Indian tribal governments to exercise criminal jurisdiction over certain non-Indians who violate qualifying protection orders or

commit domestic violence against Indian victims on tribal lands. The original Act also established the Office on Violence Against Women within the U.S. DOJ. VAWA is codified in part at 42 U.S.C. §§ 13701-14040. It initially went into effect in 1994, and has subsequently be reauthorized in 2000, 2005, and 2013; it is currently up for reauthorization again.

**6. Q: Do tribes have civil jurisdiction to issue protective orders against non-Native abusers?**

A: Yes, 18 U.S.C. § 2265(e) indicates that a tribal court “shall have full civil jurisdiction to issue and enforce protection orders involving any person”.

**7. Q: What are the requirements for a “foreign restraining order” to receive full faith and credit?**

A: Under 18 U.S.C. § 2265, a protective order must receive full faith and credit if:

- a. The court that issued the order had jurisdiction over the parties and matter under the law of the state, tribe, or territory in which it was issued; and
- b. The respondent had reasonable notice and opportunity to be heard sufficient to protect that person’s right to due process.
- c. The order is not a “dual order” restraining order (unless there are separate petitions and separate findings made by the court)

**8. Q: What does “reasonable notice and opportunity to be heard” mean?**

A: Reasonable notice means that the respondent was informed and either had or will have an opportunity to object to and contest the order.

Note: Many tribes and states, including Oregon, allow ex parte orders, meaning victims can initially petition the court for the protection order outside of the presence of the abuser. State and federal law permit ex parte orders to receive full faith and credit so long as the respondent receives notice within a reasonable time and opportunity to be heard within the time required by State, tribal, or territorial law to protect the respondent’s due process rights. These ex parte orders must therefore still receive full faith and credit.

**9. Q: What happens if there are dual restraining orders—do these get full faith and credit?**

A: A cross or counter petition, aka dual restraining orders, can only receive full faith and credit if each party submits a written petition seeking protection and the court makes specific findings that each person is entitled to a protective order. In other words, if a court has made individual findings that Person A presents a threat of harm to Person B, and Person B also presents a threat of harm to Person A after they have each filed written notice petitioning for protection from the court, then full faith and credit can apply.

**10. Q: I always check to see if the orders is in LEDS. What happens if I can’t find the foreign restraining order in LEDS?**

A: Under both Oregon and federal laws, foreign restraining orders need not be in LEDS, NCIC, or any other database to be upheld and enforced. ORS 24.190 (2) (a) states, “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” (emphasis added). Therefore, protective orders must be upheld and enforced even when the order is not locatable in law enforcement databases; law enforcement officers should conduct a facial validity assessment of the protective order to determine if the order must be upheld and enforced. In addition, 18 U.S.C. § 2265 (d) (2) states “No prior registration or filing as prerequisite for enforcement.”

**11. Q: What is a facial validity assessment?**

A: A facial validity assessment is an examination of the restraining order (both the document and through verbal information) presented by the protected party to determine:

- a. whether the order was issued by a court;
- b. that the order is valid and the most recent order in effect;
- c. that the parties involved are the persons subject to, and protected by, the order; and
- d. that the person restrained by the order has been personally served with a copy of the order or has actual notice

Law enforcement is not required to determine anything other than the facial validity of a foreign restraining order for enforcement.

**12. Q: What is “actual notice”?**

A: This is not clearly defined by statute specifically pertaining to foreign restraining orders. However, under the Oregon Rules of Civil Procedure, “actual notice” could include service methods such as certified mail and public notice or publication. There are potentially other additional means of providing actual notice that different tribes may employ.

**13. Q: What happens if I determine that the protective order is facially valid?**

A: If facially valid, law enforcement should then determine if the terms or conditions of the protection order were violated. If violated, the mandatory arrest requirements of ORS 133.310 attach.

**14. Q: What does Oregon’s mandatory arrest law require as it pertains to enforcement of foreign restraining orders?**

A: Under ORS 133.310(4) of 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:

- a. presents a copy of the foreign restraining order to the officer;
- b. represents to the officer that the order supplied is the most recent order in effect between the parties;
- c. represents to the officer that the person restrained by the order has been personally served or has actual notice of the order; and
- d. the officer has probable cause that the condition(s) of the order have been violated.

Note: Pursuant to ORS 133.310(5), in the event that the victim has elected to register 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. If the foreign restraining order is in LEDS and/or NCIC, the officer need only establish probable cause that the condition(s) of the order have been violated to make a mandatory arrest.

**15. Q: Can I check LEDS to see if the order is registered?**

A: Yes, you *may* still check LEDS or any other database to see if the protective order is registered in these systems because victims have the *option* of registering their protection orders into LEDS or another system. However, this choice by the victim is completely optional; see question 18 for more information. If you don’t find the order in LEDS, your job is not done; you must next conduct a facial validity assessment.

**16. Q: Do I need to contact the tribal court administrator to verify the order is still active?**

A: A protective order deemed by you to be facially valid is all that is needed to enforce the protective order under Oregon and federal laws. Because violations or reports of violations of protective orders often occur during non-business hours, you will be unable to call the tribal court administrator to verify the order. Furthermore, waiting to check with a tribal court administrator prior to enforcement, would create an additional burden on a Native victim not placed on a victim who received a protective order off-reservation, which violates the Equal Protection Clause of the 14<sup>th</sup> Amendment of the United States Constitution.

For your reference, you have been provided the contact information for the tribal court administrators for the six (6) Oregon tribes that are currently issuing protective orders. This contact form can be used after mandatory arrest of a violator to provide the charging DDA a certified copy of the protective order if needed for or after charging decision.

**17. Q: Do or can tribes enter protective orders directly into a law enforcement database?**

A: Some tribal courts may be able to enter protective orders directly into NCIC through the Tribal Access Program (TAP). Some tribal courts may have agreements with nearby sheriff's offices to process entry of tribal restraining orders into LEDS/ NCIC. There is no requirement for tribes to do either of these things in order for tribal restraining orders to be enforced.

**18. Q: Can the protected person register or file the protective order into a law enforcement database?**

A: Yes, a protected person may register the protective order into a law enforcement database, but this is completely optional. In fact, registering the order may be dangerous for a victim or protected person, as it may allow the abuser to track the new location of that person. However, at whatever point, if any, a protected person decides to register the protective order, the protected person has two options:

- a. They 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 per ORS 24.190(6). The court may not collect a filing fee.
- b. Per ORS 24.190 (3) (a), they may present a true copy of the order to a county sheriff for entry into LEDS and NCIC. Then, the county sheriff shall enter the order into LEDS and NCIC if the victim states that 1) the order is the most recent order in effect between the parties and 2) 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 LEDS then constitutes notice to all law enforcement agencies of the existence of the order. The order is then fully enforceable as an Oregon order in any county or tribal land in this state.

**19. Q: This tribal restraining order looks different than the Oregon orders I'm used to seeing. Do I have to uphold and enforce it?**

A: Yes, under both state and federal laws, law enforcement officers are required to uphold and enforce protective orders from other jurisdictions, no matter what it looks like. So long as it has the required information on the order under question 7, it must receive FF&C. Sometimes, the foreign order may have a statement that specifically indicates the order is compliant with FF&C and/or VAWA on the order, but this is not required.

**20. Q: What's the venue for the contempt proceeding for the violation of a restraining order (VRO)?**

A: Per ORS 107.728, a contempt proceeding for a Violation of Restraining Order can 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.

**21. How am I covered in terms of liability if I arrest this person and there actually isn't an active protective order?**

A: Pursuant to ORS 133.315 (2), 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. In other words, if you conduct a complete facial validity assessment and determine the order to be facially valid, and find that the circumstances meet the mandatory arrest requirements under ORS 133.310, you are criminally and civilly protected from liability.

Furthermore, pursuant to ORS 133.315 (1), 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 LEDS or NCIC provided that the officer acts in good faith and without malice.

**22. Q: How am I covered in terms of liability if I do not uphold a valid foreign restraining order?**

A: The protection under ORS 133.315 is for *acting*, not *failure to act*. Peace officers who knowingly fail to enforce a [restraining order] are, over defenses of official discretion and official immunity, potentially liable for resulting harm to the psychic and physical health of the intended beneficiaries of the judicial order. *Nearing v. Weaver*, 295 Or. 702 (1983).

**23. Q: What happens if I learn that the victim knowingly lied to me about the protective order?**

A: Although we encourage officers to start by believing and assume best intentions from victims and protected persons, ORS 133.318 provides criminal penalties for individuals who knowingly lie about their foreign protective order. Specifically, any person who provides a peace officer a copy of a writing purporting to be a foreign restraining order knowing that no valid foreign restraining order is in effect shall be guilty of a Class A misdemeanor. In addition, any person who represents to a peace officer that a foreign restraining order is the most recent order in effect between the parties or that the person restrained by the order has been personally served with a copy of the order or has actual notice of the order, knowing that the representation is false, commits a Class A misdemeanor.

**24. Q: What if I have questions or concerns about full faith and credit?**

A: 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](mailto: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](mailto:tim.simmons@usdoj.gov).