

Full Faith and Credit for Tribal Protection Orders

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What is “Full Faith & Credit”?

Article IV, Section 1 of the U.S. Constitution:

“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.

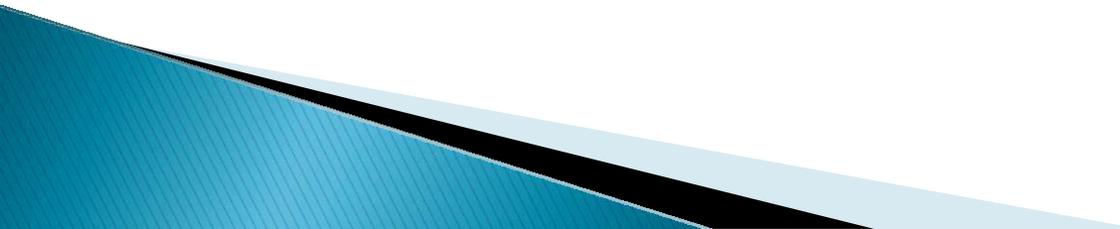
Examples: driver’s licenses, marriage licenses, birth certificates, divorce decrees

How are Protection Orders Given Full Faith & Credit?

VAWA's full faith and credit provision was enacted by Congress in 1994:

*“Any protection order issued that is consistent with subsection (b) of this section 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 of the other** State, Indian tribal government or Territory ... as if it were the order of the enforcing State or tribe.”*

-USC Title 18 § 2265



Protection Orders that Qualify for Full Faith & Credit

A protection order issued by a State, tribal, or territorial court is given full faith & credit under VAWA if:

- The issuing court has **personal and subject matter jurisdiction**, and
- **The respondent had reasonable notice and opportunity to be heard** sufficient to protect due process.
 - In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

Protection Orders that Qualify for Full Faith & Credit

A “protection order” is defined as any injunction, restraining order, or other order issued by a criminal or civil court for the purpose of prevention violence or harassment, sexual violence, physical proximity to another, or contact/communication with another. *18 U.S.C. §2266(a)*

This includes both temporary and final orders, as long as they were issued in response to a complaint, petition, or motion.

Protection orders can be called by many different names, but as long as it falls under the broad federal definition for “protection order,” it is given full faith & credit:

- Restraining orders
- No contact orders
- Stay away orders
- Injunction for protection
 - Ex parte order

Which protection orders AREN'T given full faith & credit?

Orders issued against both parties (where one petition or motion leads to a protection order issued for both the petitioner and the respondent) are not given full faith & credit

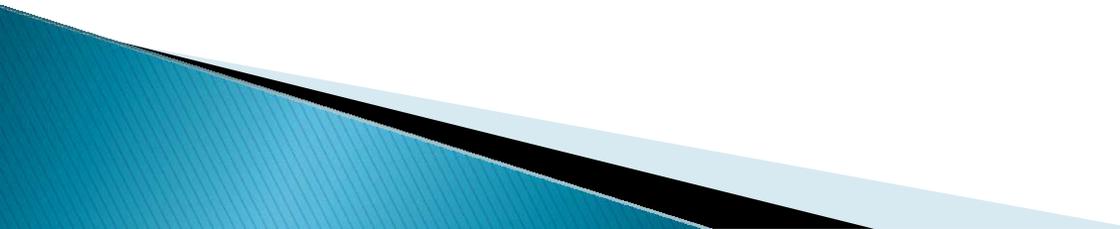
UNLESS...

The respondent has filed a cross- or counter-petition for a protection order and the court made specific findings that each party was entitled to such protection.

Foreign Protection Orders

A “foreign judgment” is 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 Oregon. *ORS 24.105*

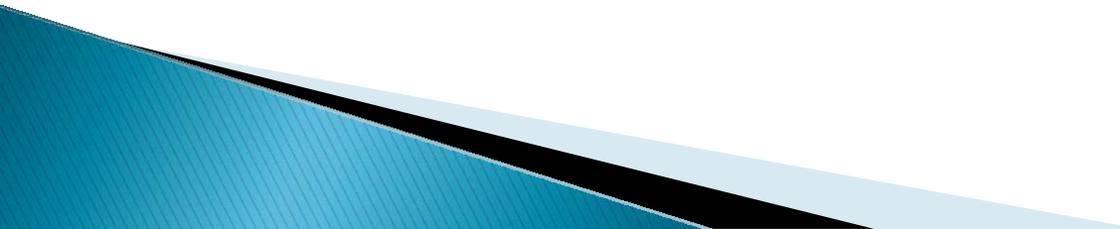
A foreign restraining order is any foreign judgment issued for the purpose of preventing violent or threatening acts or harassment against another person, contact or communication with another person, or physical proximity to another person. *ORS 24.190*



When does a foreign protection order become valid?

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.*

UNLESS....



The Foreign Protection Order is NOT VALID when:

The person restrained by the order shows that:

- Lack of jurisdiction; **or**
- Lack of reasonable notice and an opportunity to be heard

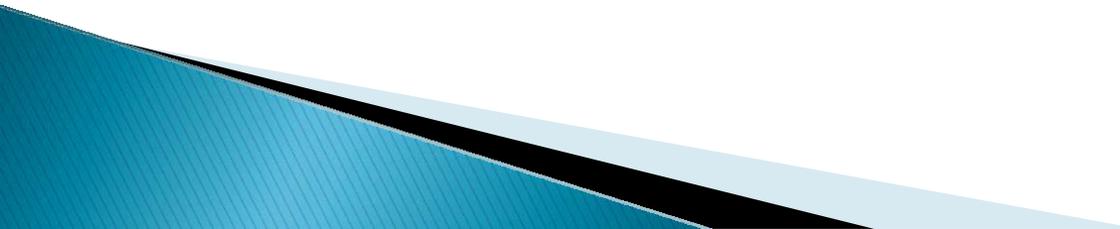
-- OR --

Dual restraining order was issued, unless:

- The person protected by the foreign restraining order filed a separate petition seeking the restraining order; **and**
- The court issuing the foreign restraining order made specific findings that the person was entitled to the order.

Enforcement of a Foreign Protection Order

Pursuant to the federal full faith & credit provision of VAWA:

- Protection orders must be enforced even if they are not registered or filed with the enforcing jurisdiction's law enforcement or courts
 - The enforcing jurisdiction may not send notice to the respondent when a foreign protection order is registered or filed unless requested by the petitioner
 - States, tribes, and territories may not make publicly available on the Internet the filing, issuance, or registration of a protection order
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Enforcement of Protection Orders by Indian Tribal Courts

Tribal courts have jurisdiction to use their civil powers to enforce protection orders against non-Indians through civil contempt, exclusion, or other means.

Tribal courts have jurisdiction to enforce protection orders against Indians through misdemeanor criminal process, civil contempt, exclusion, or other means.

*Public Law 280 gives concurrent jurisdiction to some tribes and states over civil and criminal matters that arise in Indian Country. If a protection order issued by a PL 280 tribe is violated in Indian Country, the state shares concurrent criminal jurisdiction if the offense constitutes a crime under state law.

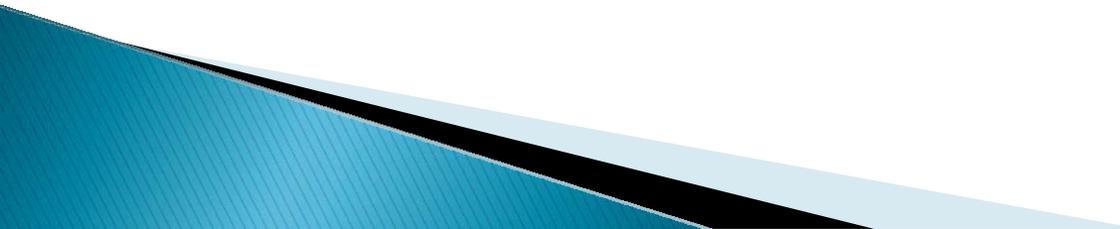
Mandatory Arrest- Protective Order Violation (ORS 133.310)

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

There exists an order **issued pursuant to ORS 30.866**
(protective orders) restraining the person;

A true copy of the order and proof of service on the person **has been filed as required** in ORS 107.720 (proof of service to be delivered to sheriff); **and**

The person to be arrested has **violated the terms** of that order.



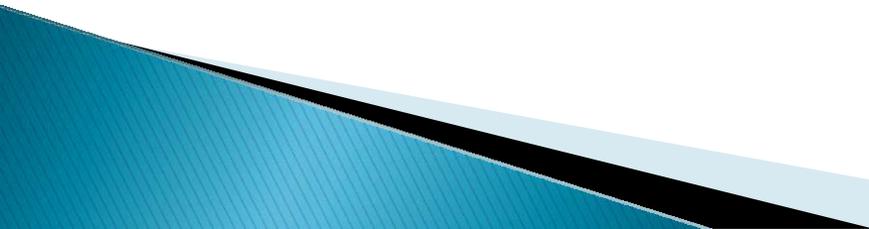
Mandatory Arrest- Foreign Protective Order (133.310)

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

OPTION 1

- The person protected by a foreign restraining order as defined by ORS 24.190 **presents a 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**
- The peace officer has **probable cause** to believe that the person to be arrested has violated the terms of the foreign restraining order.

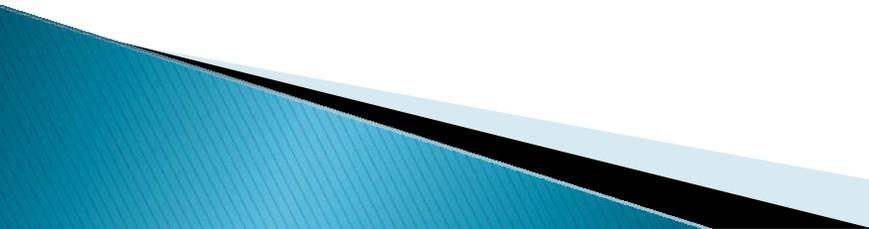
--OR--



Option 2:

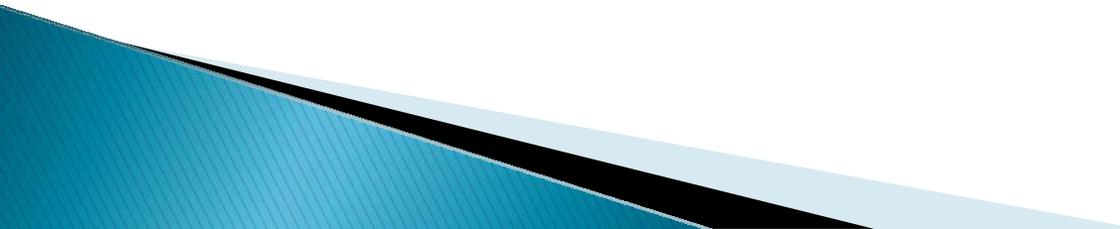
- The person protected by a foreign restraining order as defined by ORS 24.190 has **filed a copy of the foreign restraining order** with a court or has been identified by the officer as a party protected by a foreign restraining order entered in the Law Enforcement Data System or in the databases of the National Crime Information Center of the United States Department of Justice; **and**
- The peace officer has **probable cause** to believe that the person to be arrested has violated the terms of the foreign restraining order.

Options for Voluntary Entry Into LEDS

- A person protected by a foreign restraining 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.
 - 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.
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VAWA- U.S.C. 18 § 2265

State, Indian tribe, or territory **shall not notify or require notification of the party against whom a protection order has been issued** that the protection order has been registered or filed in the enforcing state

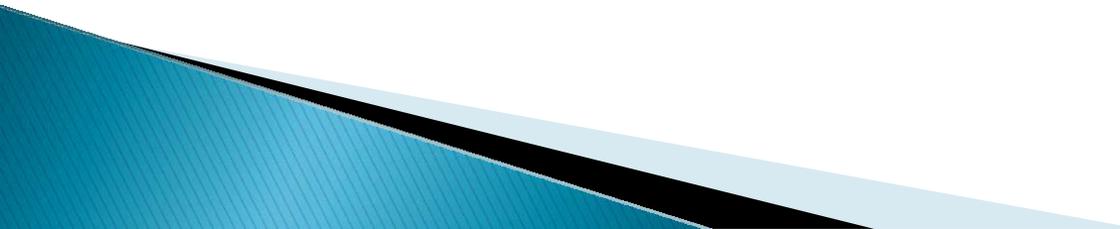


So...why is enforcement of a foreign protection order a problem in Oregon?

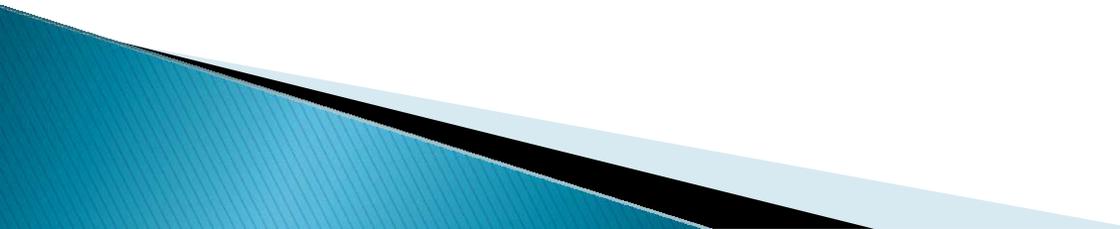
- Lack of coordination
- Lack of communication
- Lack of cooperation

Collaboration, cooperation and education are crucial!

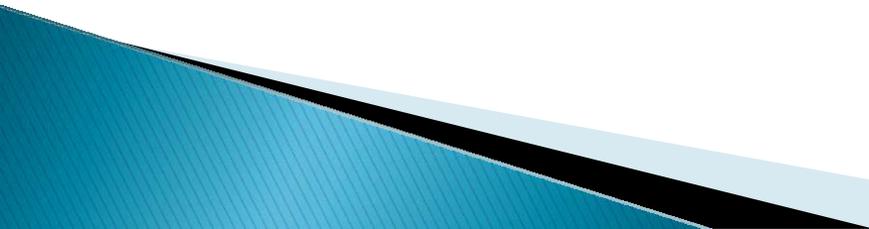
Issues We Are Facing

- Failure to meet full faith & credit requirements
 - Issues of law enforcement officers and prosecutors failing to recognize valid foreign protection orders
 - Issues with verification of protection orders and interjurisdictional sharing of information
 - Interpersonal obstacles
 - Limited service options
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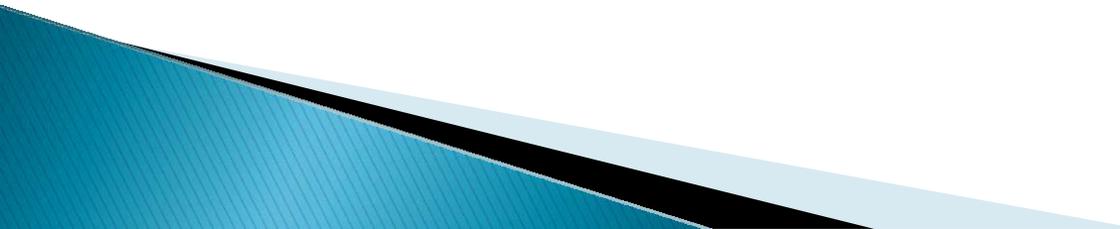
Issue 1: Failure to Meet Full Faith & Credit Requirements

- Lack of coordination and communication means that state law enforcement and prosecutors are unaware of the requirements for enforcement of a foreign order under VAWA
 - Law enforcement and prosecutors do not understand tribal code or the basis for tribal courts to issue the protection orders, putting the order's validity in doubt
 - Tribal courts' notice requirements may be different and this misunderstanding prevents enforcement of the order
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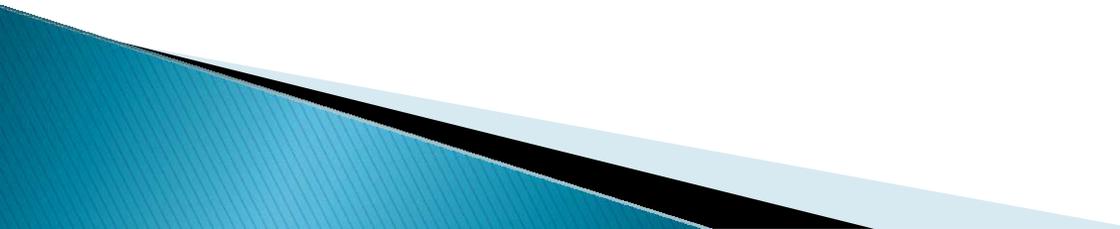
Issue 2: Law Enforcement Recognition of Protection Orders

- Tribal court orders look different from state court orders
 - Lack of training and understanding of what is required for the enforcement of a “foreign order” (ex. should law enforcement follow the laws of the issuing jurisdiction or the enforcing jurisdiction when enforcing a foreign protection order)
 - Lack of training and understanding that foreign orders do not need to be registered with new court/LEDS, and lack of training on how to enforce the order when the typical method of verification is not available (ie. LEDS)
 - Lack of training and understanding by prosecutors of their ability to file for a protection order violation
 - Lack of formalized process for survivors/petitioners to register their orders with the local county (if desired)
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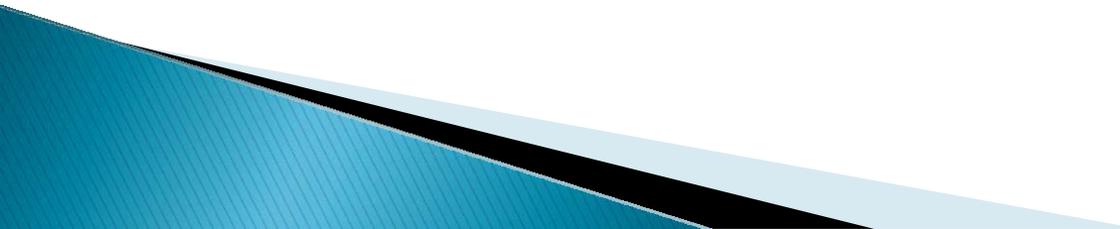
Issue 3: Verification/Interjurisdictional Info Sharing

- Possible entry into State and Federal database systems
 - Sharing amongst Tribal and non-Tribal law enforcement
 - Sharing between Tribes and State prosecutors
 - Sharing among Tribal and State courts
 - Sharing between Tribes
 - Law enforcement officer's verification of orders is BEST PRACTICES, but violates VAWA/ Full Faith & Credit
 - Ability to prosecute requires a little more- need to confirm that the orders meet the necessary elements
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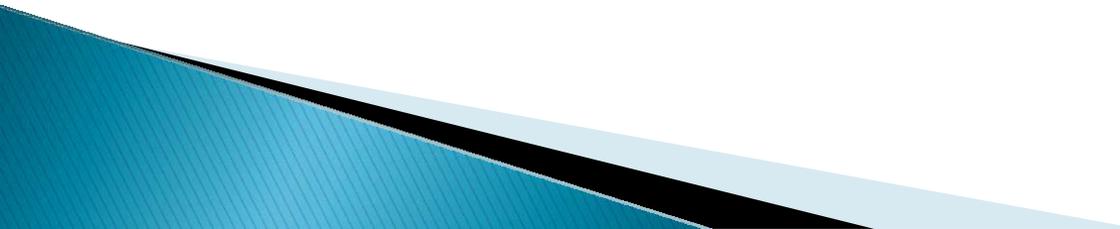
Issue 4: Interpersonal Obstacles

- Need to build trust, understanding and mutual respect between tribes and state agencies
 - Need to recognize the history and current concerns of individual tribes and their tribal justice systems
 - Need to recognize the sovereignty of tribal nations and understand that a solution that works “best” for the state courts and state law enforcement is not the goal, but rather a collaborative solution that works for everyone
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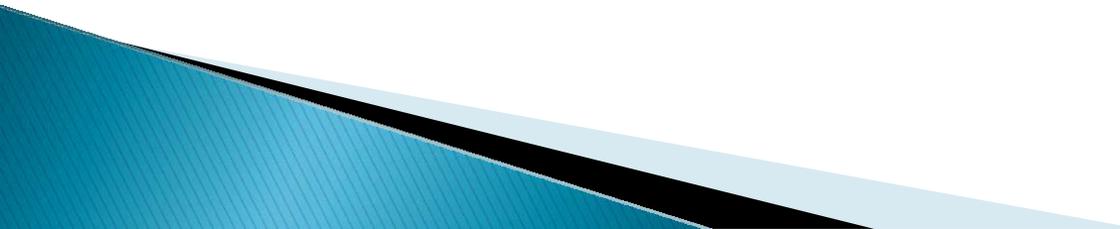
Issue 5: Limited Services

- Consider issues surrounding rural and isolated areas and the lack of services available to survivors
 - Understand the limitations surrounding housing, transportation, emergency services, shelter services for native victims of domestic and sexual violence
 - Differences in individual tribes
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State/Tribal Court Forum Goals:

- Recognize the sovereignty of each tribal nation and their separate needs
 - Enhance collaboration between tribes and local county partners (courts, DAs, law enforcement) to determine the process, PO verification, enforcement plan
 - Potential Supreme Court order to appropriately enforce tribal (and all foreign) protective orders
 - Possible opinion letter from the AG's office to prosecutors to appropriately enforce tribal (and all foreign) protective orders
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State/Tribal Court Forum Goals:

- Understand what each tribe is able/ wants to do regarding verification of orders
 - Determine whether tribal courts can/want to enter the information for petitioners into NCIC database (through Tribal Access Program/ TAP)
 - Make sure that tribal advocates and petitioners know the process (if desired) to register orders ****NOT REQUIRED****
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State/Tribal Court Forum Goals:

- Create an enforcement guide for law enforcement and prosecutors that includes information on federal and state law, full faith and credit requirements, and tribe information
 - Create webinar training for enforcement of foreign protection orders
 - Deliver live trainings to state law enforcement agencies and prosecutors
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