

LC 313
2021 Regular Session
OSB00-011
8/21/20 (MNJ/ps)

D R A F T

SUMMARY

Provides procedure for recognition and enforcement of orders and judgments of tribal courts in courts of this state.

Modifies provisions relating to foreign restraining orders.

A BILL FOR AN ACT

Relating to foreign courts; creating new provisions; and amending ORS 24.190, 133.310 and 133.315.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) A party seeking enforcement of an order or judgment of the tribal court of record of a federally recognized Indian tribe shall proceed by petition, or, in a pending action, by motion, in any court of this state. 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 the judgment or order was entered. Notwithstanding ORS 24.115, the court may not charge a fee to initiate or respond to a petition or motion for the recognition of a tribal court order or judgment. 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 before determining the matter submitted to it by petition or motion.

(2) A court of this state shall recognize and enforce the orders and judgments of tribal courts of record of federally recognized Indian tribes unless a party subject to the order or judgment the petitioner

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

or movant seeks to enforce demonstrates that:

(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.

SECTION 2. ORS 24.190 is amended to read:

24.190. (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.

(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) Except as otherwise expressly provided in the order, issues of non-enforceability described in paragraph (b) of this subsection are affirmative defenses in an action seeking enforcement of the order.

(3)(a) A person protected by a foreign restraining order **or a person acting on behalf of 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. 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 **or the National Crime Information Center** 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.

(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.

(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 acting on behalf of a person protected by a foreign restraining order** 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.

(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 or omission arising out of the registration or enforcement of a foreign restraining order or the detention or arrest of an alleged violator of a foreign restraining order if the act or omission was done in good faith and without malice in an effort to comply with state and federal law.

SECTION 3. ORS 133.310 is amended to read:

1 133.310. (1) A peace officer may arrest a person without a warrant if the
2 officer has probable cause to believe that the person has committed any of
3 the following:

4 (a) A felony.

5 (b) A misdemeanor.

6 (c) An unclassified offense for which the maximum penalty allowed by law
7 is equal to or greater than the maximum penalty allowed for a Class C
8 misdemeanor.

9 (d) Any other crime committed in the officer's presence.

10 (2) A peace officer may arrest a person without a warrant when the peace
11 officer is notified by telegraph, telephone, radio or other mode of communi-
12 cation by another peace officer of any state that there exists a duly issued
13 warrant for the arrest of a person within the other peace officer's jurisdic-
14 tion.

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

17 (a) There exists an order issued pursuant to ORS 30.866, 107.095 (1)(c) or
18 (d), 107.716, 107.718, 124.015, 124.020, 133.035, 163.738, 163.765, 163.767 or
19 419B.845 restraining the person;

20 (b) A true copy of the order and proof of service on the person has been
21 filed as required in ORS 107.720, 124.030, 133.035, 163.741, 163.773 or 419B.845;
22 and

23 (c) The person to be arrested has violated the terms of that order.

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

26 (a) The person protected by a foreign restraining order as defined by ORS
27 24.190 presents a **physical or electronic** copy of the foreign restraining or-
28 der to the officer and represents to the officer that the order supplied is the
29 most recent order in effect between the parties and that the person re-
30 strained by the order has been personally served with a copy of the order
31 or has actual notice of the order; 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.

(5) 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, or a person acting on behalf of a 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.

(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.

SECTION 4. ORS 133.315 is amended to read:

133.315. (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.

