



# Laying the Foundation:

Strengthening Court Practices

Under The Violence Against Women Act

March 4-5, 2026

Seven Feather Casino & Resort,  
Canyonville, Oregon



# Coming Up | UNIT 4

Full Faith and Credit under VAWA: Drafting Effective Tribal Court Orders

**Tim Simmons**

Tribal General Legal Counsel, Cow Creek Band of Umpqua Tribe of Indians



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# Full Faith and Credit under VAWA: Drafting Effective Tribal Court Orders

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General Legal Counsel  
Cow Creek Band of Umpqua Tribe of Indians



## VAWA FULL FAITH AND CREDIT

Under the Violence Against Women Act (VAWA), tribal court protection orders are entitled to full faith and credit—meaning they must be recognized and enforced by state, tribal, and territorial courts across the United States as if they were issued by the enforcing jurisdiction. To ensure a tribal protection order is enforceable nationwide, it must meet specific requirements related to jurisdiction, due process, and proper drafting.

# What is “Full Faith & Credit”?

Article IV, Section 1 of the United States Constitution

- Full faith and credit shall be given in each state to the public acts, records and judicial proceedings, of every other state.
- Congress may by general laws prescribe the manner in which such acts, records, and proceedings, shall be proved and the effect thereof.

Assures that when a state issues a license, court order, judgment or other decree that it is honored in every other state

# What Does Full Faith and Credit Apply To?

- Marriage Certificates
- Birth Certificates
- Child Custody and Visitation
- Child Support Determinations
- **Protection Orders**

# How Does Full Faith & Credit Apply to Protection Orders?

Full Faith & Credit for protection orders are enacted as part of the Violence Against Women Act (VAWA) 18 USC § 2265:

- "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 [territory] **as if** it were the **order of the enforcing State, Indian tribe, or territory.**

# Definition of Protection Order (18 U.S.C. § 2266)

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 . . . 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”.

# **Definition of Protection Order (18 U.S.C. § 2266)(Cont.)**

Protection Order also includes:

“(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.”

# What is Required Under Federal Law?

A protection order is issued by the court of any other state, Indian tribe, or territory

- If violated, it **must be enforced as though the order had been issued in the enforcing jurisdiction**

A protection order issued by any other state, Indian tribe, or territory **does NOT have to be filed, registered or otherwise entered** into any database in order to be enforced

- This includes, but is not limited to, Law Enforcement Data System (LEDS), and the National Crime Information Center of the US Department of Justice (NCIC)

18 USC § 2265(d)

# What is the Criteria for Protection Orders to Receive Full Faith & Credit Under Federal Law?

- The court has **jurisdiction** over the parties and matter
- Reasonable **notice and opportunity to be heard** is given to the person against whom the order is sought
- **Ex parte orders**- notice and opportunity to be heard provided within the time required by issuing entity and in any event within a reasonable time after the order is issued, sufficient to protect respondent's due process rights
- It is **not a mutual or dual order; unless**
  - 1) A cross- or counter- petition is filed and
  - 2) The **court made specific findings** that each party was entitled to an order or protection

18 USC § 2265(b)

# Tribal Court Jurisdiction

Tribal courts have **full civil jurisdiction** under the full faith and credit provision of VAWA to issue and enforce protection orders **involving any person** (Indian or non-Indian) in matters **arising anywhere** in the tribe's Indian Country (18 USC 1151) or otherwise **within the tribe's authority**.

Includes authority to enforce any orders through **civil contempt** proceedings, to **exclude violators** from Indian land, and to use **other appropriate mechanisms**.

18 USC 2265(e)

# Key Requirements for VAWA Compliance (18 U.S.C. § 2265)

A tribal protection order is eligible for full faith and credit if it meets the following criteria:

- **Jurisdiction:** The Tribal Court must have jurisdiction over the parties and the subject matter of the case. This includes the authority to issue and enforce protection orders involving any person within the Indian country of the tribe or otherwise within the tribe's authority.
- **Due Process:** The respondent must have been given "reasonable notice and opportunity to be heard", sufficient to protect their due process rights. For ex parte orders, notice and an opportunity to be heard must be provided within the time required by tribal law or, at a minimum, within a reasonable time after the order is issued.
- Order must be treated as if it were issued by the enforcing jurisdiction

# Personal & Subject Matter Jurisdiction

## Example [*Baker v Erickson ND*]

- Baker, an enrolled member of the Turtle Mountain Band of Chippewa Indians, and LuAnn Erickson, a non-member of the Tribe, were divorced in 2016.
- Erickson was granted primary custody of the couple's three minor children, who are also members of the Tribe.
- Erickson and the children resided in Bismarck. However, Erickson had an alcoholic relapse and Baker retrieved the children from their residence on April 10, 2021. Baker took the children to Belcourt, where they began residing with their father.
- Baker filed a petition for protection relief in Turtle Mountain Tribal Court on April 12. Baker provided the tribal court with Erickson's Bismarck home address in the petition.
- On April 15, Erickson asked Baker to temporarily parent the children while she was in treatment.

# Personal & SMJ Example (Cont.)

- On April 20, the tribal court entered a temporary ex parte protection order against Erickson. A hearing on the order was scheduled for May 6, and an affidavit of mailing reflects that the tribal court mailed a copy of the order for telephonic hearing, notice of entry of order, and the temporary ex parte protection order to Erickson's Bismarck address.
- On May 3, Baker's attorney filed a notice of appearance with the tribal court. Service was attempted via certified mail to Erickson's Bismarck address and also was sent to her email address.
- Baker's attorney then emailed exhibits to Erickson and the court on May 5, to which Erickson responded, "adding Pat O'Day, my lawyer." Erickson was not present at the hearing on the temporary protection order held the following day.
- The tribal court entered a permanent restraining order, prohibiting any contact between Erickson and her children for one year, and granted custody to Baker for the duration of the order.
- The clerk mailed a copy of the permanent protection order to Erickson's Bismarck address.

## Personal & SMJ Example (Cont)

- On May 18, Baker filed the permanent restraining order in Rolette County district court as a foreign judgment. The court entered an order granting the registration of the foreign judgment pursuant to state court.
- Erickson filed a motion to vacate the order granting recognition of the foreign judgment arguing that the tribal court did not have jurisdiction over her or her children and that she was never properly served with the temporary or permanent restraining orders.
- Following a hearing, the district court found that the tribal court protection order was entitled to full faith and credit under 18 U.S.C. § 2265, separate and apart from state rule because the court made findings that the tribal court had jurisdiction over the matter and the parties and Erickson was afforded reasonable notice and opportunity to be heard.
- Erickson filed a motion to vacate arguing the district court's order affording the tribal court's protection order full faith and credit is void because the tribal court lacked personal and subject matter jurisdiction over the parties.

# Personal & SMJ Example (Cont.)

- In order for the Rolette County district court to recognize and enforce the tribal court protection order, the tribal court must have had both subject matter and personal jurisdiction over the matter and the parties.
- The district court found both to be satisfied but did not make specific findings regarding each aspect of jurisdiction.
- The parties also do not dispute what the applicable tribal law is to determine whether the tribal court had personal jurisdiction- Turtle Mountain Tribal Code.
- Erickson argues the district court erred in finding personal jurisdiction to be satisfied, because she was not properly served with the tribal court proceedings.
- Turtle Mountain Code, which governs the procedures for issuance of temporary and permanent protection orders, provides:
  1. Service upon the Respondent at least five days prior to the hearing and
  2. Served by certified mail, return receipt requested, or may be served personally upon an individual defendant.
  3. Service at the defendant's usual abode with a resident of the household above the age of fourteen (14) years, if the defendant cannot be conveniently found.

# Personal & SMJ Example (Cont.)

- The record does not reflect that Erickson was properly served with the tribal court proceedings under the Tribal Code.
- Regarding the temporary ex parte order proceedings, the tribal court mailed a copy to Erickson's Bismarck address via regular mail.
- The clerk of the tribal court confirmed in an email that the court relied on lack of returned mail as evidence of service. Mailing the documents, without using certified mail or return receipt requested, was insufficient under Tribal Code.
- The tribal court could not lawfully proceed with the proceedings unless Erickson was served "at least five days prior to the hearing."
- Without proper service on Erickson, a hearing should not have been held, and a permanent protection order should not have issued.
- Erickson was notified of the protection order proceedings after a permanent protection order was already entered, she was not afforded reasonable notice and opportunity to be heard to satisfy 18 U.S.C. § 2265(b)(2).
- Although Erickson responded to Baker's attorney's email, this email was sent to Erickson the day before the hearing. Further, the email did not contain any information that would have informed Erickson a hearing would be conducted the following day.
- Court concludes insufficient to satisfy due process requirements.
- Tribal court lacked personal jurisdiction and Erickson was not afforded reasonable notice and opportunity to be heard- No full faith and credit for restraining order.

# Essential Elements for Drafting Effective Orders

- **Explicitly Cite Authority:** Include language in the order that the court has subject matter and personal jurisdiction over the parties and that the order is issued in compliance with VAWA (18 U.S.C. § 2265).
- **Document Due Process:** Clearly state that the respondent was served, given notice, and had the opportunity to be heard.

# Essential Elements for Drafting Effective Orders (Cont.)

Be Specific and Clear:

- **Terms:** Use clear language regarding "no contact" (direct or indirect), "stay away" (specific distances/locations), and firearm prohibitions.
- **Duration:** Clearly state the expiration date or if it is a permanent order.
- **Parties:** Clearly identify the protected person(s) and the restrained person.

# Essential Elements for Drafting Effective Orders (Cont.)

- **Address Dual Orders:** If cross or counter-petitions were filed, the court must make separate, specific findings that each party was entitled to a protection order. A "mutual" order without specific findings is generally not entitled to full faith and credit.
- **Include Judicial Information:** Include the typed name of the judge, the court's contact information (phone, address, email), and the court seal.

# Content of the Protection Order

- Restraining the respondent from committing acts of domestic violence, harassment, stalking, or other threatening behavior.
- Excluding the respondent from the residence, workplace, or other locations frequented by the petitioner.
- Prioritizing the safety of the petitioner and children.
- Ordering the respondent to participate in counseling or treatment programs.
- Providing other relief deemed necessary for the protection of the petitioner, including financial support or property-related orders .

# Ensuring Enforcement Beyond Tribal Lands

- **Enforcement Mechanisms:** Tribal courts have the authority to enforce protection orders through civil contempt proceedings, exclusion of violators from tribal lands, and other appropriate mechanisms.
- **NCIC Registration:** Enter the order into the National Crime Information Center (NCIC) Protection Order File as soon as possible. Or the states' Law Enforcement Data System (LEDS). Do you have Tribal Access Program (TAPS).
- **No Registration Requirement:** Under VAWA, an order does not need to be registered in a new jurisdiction to be enforceable; however, registration simplifies the process for local law enforcement.

# Common Pitfalls

- **Missing Service:** The order is unenforceable if the respondent was never served.
- **Ambiguity:** Vague terms like "stay away from the area" rather than specific addresses.
- **Lack of Findings:** Failing to document that due process was provided.

# RECOGNITION OF TRIBAL ORDERS IN OREGON

# Official Guidance for Enforcement of Tribal Protection Orders Memo (January 2020)



**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](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).

#### 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

# Recognizing Tribal Orders Under Oregon Law

- 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 AND any judgment, decree or order of a tribal court of a federally recognized Indian tribe.
- A “**foreign restraining order**” is a “foreign judgment” that is a restraining order.

ORS 24.190; ORS 24.105

# What is Required for Recognition of Tribal Protection Orders Under Oregon Law?

- ORS 24.190. “Foreign Restraining Order”
- A restraining order is an injunction or other order issued for the purposes of preventing:
  - 1) Violent or threatening acts or harassment against another person;
  - 2) Sexual Violence
  - 3) Contact or communication with another person; or
  - 4) Physical proximity to another person
- Includes temporary and final orders
  - \*Restraining orders must have been in response to a complaint, petition or motion **filed by or on behalf of the person seeking protection.**

# Ex Parte Orders Qualify

- Many tribes and states, including Oregon, allow for ex parte orders.
- Ex parte orders allow for the initial petition to be granted without the presence of the respondent.
- There is still an opportunity to be heard, and therefore still receive full faith and credit.

# Foreign Restraining Order Not Enforceable Under Oregon Law

- **LACK OF PROCESS:** If the respondent of the order shows that:
  - 1) The court that issued the order lacked jurisdiction over the subject matter or personal jurisdiction over the person restrained by the order; OR
  - 2) 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
- **DUAL RESTRAINING ORDER:** If the foreign restraining order was issued against a person who petitioned for a restraining order, not enforceable unless:
  - 1) The respondent filed a separate petition for a restraining order; AND
  - 2) The court issued the second order making specific findings that the person was entitled to the order.

**ORS 24.190**

# Affirmative Defenses to Enforceability

- **FACIAL VALIDITY TEST:** Issues of non-enforceability are AFFIRMATIVE DEFENSES in an action seeking enforcement of the order.
- UNLESS, it's obvious on its face (ie, SAYS that it's a dual order)
- Issues of non-enforceability:
  - Issuing court lacked jurisdiction over the subject matter or the person restrained by the order;
  - Not given reasonable notice/ opportunity to be heard; or
  - It's a dual order.

**ORS 24.190(2)(c)**

# When are Foreign Restraining Orders Valid in Oregon

➤ **Immediately** upon the arrival of a person protected by a foreign restraining order the foreign restraining order is

1) Enforceable as an Oregon order

2) **Without the necessity of filing**

3) Continues to be enforceable as an Oregon order **without any further action** by the protected person.

ORS 24.190(2)

# Oregon Law – Entry into LEDS/NCIC or Court Not Required

- The order is in effect immediately – without the protected party or tribe needing to take any action.
- A person/ person on behalf of the protected person **MAY file:**
  - 1) With the circuit court of any county in Oregon
  - 2) With a county sheriff.

**ORS 24.190(2)**

# Optional Filing/ Registration of Tribal Order – with the Court

- A protected person, or a person on behalf of a protected person, may file a certified copy of the order and proof of service with the circuit court of any county in Oregon → public record.
- PROCESS:
  - If filed with the Court, then the order should be processed for entry to the county Sheriff's office, the same way that other orders are entered.

**ORS 24.190(6)**

# Database Entry of Oregon Orders

- When a restraining order is granted under Oregon law
  - The **clerk of the court shall immediately** deliver to the county sheriff copies of the petition and the restraining order
  - Upon receipt of a copy of the restraining order and notice of completion of service → the **county sheriff shall immediately** enter the restraining order into LEDS/ NCIC
  - The restraining order is **fully enforceable** in any county or tribal land in this state
  - When a circuit court enters an order terminating a restraining order, the **clerk of the court shall immediately deliver** a copy of the termination order the county sheriff and the **county sheriff shall** promptly remove the original restraining order

ORS 163.773

# Optional Filing/ Registration of Tribal Orders – with the Sheriff's Office

- A person **MAY** present a copy of a foreign restraining to Sheriff for entry into LEDS/NCIC (interagency process)
- A copy of the foreign restraining order → to a county sheriff for entry into LEDS and NCIC
- If a **person** requests this, the county sheriff **shall promptly verify the validity of the order and personal service or actual notice** and **shall** enter it into LEDS and NCIC

ORS 24.190(3)

# Personal Service vs. Actual Notice

- Under Oregon Civil Rules of Procedure there are a variety of ways that a person can be “served” and what constitutes “actual notice”
  - Personal service (true copy to the person directly)
  - Substituted service (at the dwelling house or usual place of abode to a person 14 years or older) + mail to dwelling
  - Service by mail
  - Publication
  - Other options – “actual notice”
- “Personal Service” or “Actual Notice”: (ORS 24.190 (3))
  - **Includes** alternative forms of service or notice that are permitted by the **issuing jurisdiction** to constitute service or notice.

# What Must State Law Enforcement Agencies Do?

- Entry into LEDS/NCIC constitutes **notice to all law enforcement** agencies of the existence of the (foreign) restraining order.
- An order entered into LEDS is **fully enforceable** as an Oregon order in any county or tribal land in this state.
- 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 of the terms of the order.

ORS 24.190(3)(a)

# Liability of Peace Officer Making Arrest on Violation of Tribal Order

No peace officer shall be criminally or civilly liable for any **arrest made** for violation of a [tribal restraining order in LEDS/ NCIC or presented to the officer] if the peace officer **acts in good faith and without malice.**

ORS 133.315

# Additional Immunity + Liability Protections

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

ORS 24.190 (7)

# Liability of Peace Officer for NOT Acting on Violation of Restraining Order

- A protection order creates a specific duty imposed by statute for the benefit of individuals previously identified by a judicial order.
- The immunities under ORS 133.315 are for making good faith arrests, not for failing to do so.

*Nearing v. Weaver*, 295 Or. 702 (1983)

# Enforcement of Tribal Orders – Copy of Order/ Facial Validity Test

➤ It does **NOT** matter if the order looks different.

## QUESTIONS TO ASK:

- Was the order issued by the court of a state, tribe, or territory that is granted full faith and credit?
- Does the order restrict one person from contact, communication, violent or threatening acts, harassment, sexual violence, or physical proximity of/to another person?
- Is the order not expired? (no expiration date listed is okay)
- Were any conditions of the tribal restraining order violated?

# Certificate of Compliance with VAWA

- *Might* include certification language (tribal courts are not required to include this in their orders)
- **CERTIFICATE OF COMPLIANCE WITH THE VIOLENCE AGAINST WOMEN ACT:** This protective order meets all full faith and credit requirements of the Violence Against Women Act, 18 U.S.C. § 2265. This court has jurisdiction over the parties and the subject matter. The respondent was afforded notice and the respondent has been given a timely opportunity to be heard as provided by the law of this jurisdiction. THIS ORDER IS VALID AND ENTITLED TO ENFORCEMENT IN THIS AND ALL OTHER JURISDICTIONS UNDER FEDERAL FULL FAITH AND CREDIT LAWS.

The Tribal Court has granted the temporary orders checked below.  
If you do not obey these orders, you will be arrested and charged with a crime.

You are restrained from having any contact or communication, direct or indirect, including by phone, mail, email, text message, or through third persons, with petitioner, petitioner's children (listed above), or petitioner's intimate partner (listed above);

You are prohibited from being within \_\_\_\_\_ feet from petitioner, petitioner's children (listed above), or petitioner's intimate partner (listed above);

You must leave the residence at \_\_\_\_\_ regardless of whose name is on any lease, mortgage, or other real estate agreement.

**CERTIFICATE OF COMPLIANCE WITH THE VIOLENCE AGAINST WOMEN ACT: This protective order meets all full faith and credit requirements of the Violence Against Women Act, [18 U.S.C. 2265](#). This court has jurisdiction over the parties and the subject matter. This order has been issued ex parte due to immediate danger to the petitioner and the Respondent will be given an opportunity to be heard in a timely manner as provided by the law of this jurisdiction. THIS ORDER IS VALID AND ENTITLED TO ENFORCEMENT IN THIS AND ALL OTHER JURISDICTIONS UNDER FEDERAL FULL FAITH AND CREDIT LAWS.**

**WARNING: POSSESSION OF A FIREARM OR AMMUNITION BY RESPONDENT WHILE THIS ORDER IS IN EFFECT MAY BE PROHIBITED UNDER FEDERAL OR STATE LAW.**

**WARNING: ONLY THIS COURT HAS THE POWER TO ALTER THESE CONDITIONS REGARDLESS OF THE CONSENT OF THE PROTECTED PARTY.**

full faith and credit requirements of the Violence Against Women Act, [18 U.S.C. 2265](#). This court has jurisdiction over the parties and the subject matter. This order has been issued ex parte due to immediate danger to the petitioner and the Respondent will be given an opportunity to be heard in a timely manner as provided by the law of this jurisdiction. THIS ORDER IS VALID AND ENTITLED TO ENFORCEMENT IN THIS AND ALL OTHER JURISDICTIONS UNDER FEDERAL FULL FAITH AND CREDIT LAWS.

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# Jurisdiction for a Violation of a Restraining Order

A contempt proceeding for a violation of a restraining order must be conducted by

- 1) The circuit court that **issued the restraining order**, or
- 2) The circuit court for the county in which the alleged **violation of the restraining order occurs** (prosecution must file a certified copy of the order from the originating court).

**ORS 163.773**

# Jurisdiction for a Violation of a Restraining Order

*State v. Merritt*, 318 Or App 7 (2022)

- Issue of jurisdiction where protected party is not physically in Oregon
  - California Restraining Order and defendant in Oregon jail making phone calls to out of state petitioner
  - State files contempt charges for violation of Order
  - Order enforceable in Oregon upon “arrival” of the protected party in Oregon\*
  - Since protected party never “arrived” in Oregon, Court dismisses contempt charges.
  - Court notes Order remained enforceable in the issuing court in Calif.
- Doesn't sufficiently take into account the federal law that requires full faith and credit be granted from jurisdiction to jurisdiction (with no requirements regarding location of either party)- Court does not address VAWA issue since never raised in lower court.

# Key Take-Aways

- Federal and state law require that protection orders issued by other states Indian tribes, or territories be recognized and enforced as though the order was issued in Oregon.
- Tribal protection orders/ “foreign protection orders” are immediately enforceable in Oregon; There is no requirement to file or register the order in any database or court record.
- If there is a voluntary request to enter into LEDS/ NCIC, the Sheriff’s Office SHALL verify and enter it.

# Key Take-Aways

- Officers must make a facial validity assessment of tribal orders presented to them and if there is PC for a violation → mandatory arrest
- Foreign orders entered into LEDS/NCIC constitute “notice” that the order exists and if there is PC for a violation → mandatory arrest
- Liability protections exist for ACTING in good faith and without malice in an effort to comply with state and federal law.

# **VAWA: Special Tribal Criminal Jurisdiction (STCJ)**

# Special Criminal Jurisdiction over non-Indians

- VAWA 2013 & 2022 Updates: Tribes can now exercise special criminal jurisdiction over non-Indians for stalking, sexual violence, child violence, sex trafficking, assaults of tribal justice personnel, obstruction of justice as well as for violating protection orders.
- Under 25 USCS § 1304 tribal courts may exercise criminal jurisdiction over violations of protection orders in cases involving domestic violence, dating violence, or other covered crimes, provided the defendant or victim is an Indian.

# Special Tribal Criminal Jurisdiction

- Allows tribes to investigate, prosecute, convict, and sentence Indians and non-Indians who commit specific crimes, if specific criteria are met to ensure the defendant's right to due process.
- Power to issue and criminally enforce protection orders against non-Indians.
- Must provide due process protections if defendant to serve ANY time.

# STCJ Criminal Violations

Crimes covered (*after October 1, 2022*):

→ **Child Violence** → **Sexual Violence** → **Stalking** → **Sex Trafficking**

→ **Assault of Tribal Justice Personnel** (NI victim)

→ **Obstruction of Justice** (NI victim)

- Crime must occur within the tribe's Indian Country
- Victim must be an Indian for most but not for all crimes
- Defendant's ties to the community are no longer a condition of tribal jurisdiction
- Tribes must provide notice in writing of certain federal rights
- Requires tribes to provide certain due process protections for non-Indian defendants 25 USC 1304(d) (*indigent defense counsel, non-Indians in jury pools, etc.*)

# Potential Federal Charges related to Protection Orders

- **Federal felony to possess firearm/ammunition- 18 USC 922(g)(8):** Unlawful for any person subject to a court order that: (a) issued after a hearing with notice; (b) restrains the person from harassing, stalking or threatening intimate partner or place in reasonable fear; (c) includes finding person a credible threat or prohibits force.
- **Federal felony to cross reservation line to violate protective order- 18 USC 2262(a)(1):** Interstate violation of protection order- interstate travel or entering/leaving Indian Country and with intent to violate protection order.

# Potential Federal Charges related to Protection Orders (Cont)

## Domestic Violence by Habitual Offender- 18 USC 117:

- Two or more prior convictions of assault, sexual abuse, or serious violent felony against spouse/ partner.
- Convictions may be from Tribal, Federal, or State court.
- Includes misdemeanor domestic assaults.
- Statute does not require that either the perpetrator or victim be Indian.

**ANY  
QUESTIONS?**

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Thank  
you





# Laying the Foundation:

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Under The Violence Against Women Act

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Seven Feather Casino & Resort,  
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# Coming Up | UNIT 5

## How to Preserve Rights for an ICWA Appeal

**Kate Fort**

Director of Indian Law Clinic, Michigan State University College of Law