

# THE FAQs OF FAPA

## **A FAPA Restraining Order:**

1. Statute Number: ORS 107.700 through 107.735
2. Who may petition for an RO: A person who has a “family/household” relationship with the Respondent. (The “family/household” definition is the same as in ORS 135.230)
3. How: A petitioner must file an affidavit with the court in the county where either the Petitioner or the Respondent resides (ORS 107.728)
4. What does the Petitioner have to allege to get an RO: (ORS 107.710(1))
  - a. There is a “family/household” relationship w/ the Respondent
  - b. “Abuse” has occurred (same definition as in ORS 135.230)
  - c. The “abuse” happened w/i 180 days of the request for the RO (w/ limited exceptions)
  - d. The Petitioner is in imminent danger of further abuse by the Respondent and Respondent represents a credible threat to the physical safety of the Petitioner or Petitioner’s child.
5. Standard of Proof to RECEIVE RO: Preponderance of the Evidence (ORS 107.710(2))
6. Duration of RO: One year (ORS 107.718(3)), but can be renewed
7. Venue for filing RO violation: Contempt proceedings on a violation of RO may be filed in the county that issued the RO or by the circuit court for the county in which the violation occurred (ORS 107.728)

## **Contempt Statute and Rules:**

All FAPA violations are filed as contempt charges.

1. Statute Numbers: ORS 33.015 through 33.155
2. “Contempt of Court”: ORS 33.015(2)(d): “Disobedience of, resistance to or obstruction of the court’s authority, process, orders or judgments.”
3. “Punitive Sanction”: A sanction imposed to punish a past contempt of court
4. “Procedure for imposition of punitive sanctions”: ORS 33.065(1)
  - a. Standard of Proof to impose a punitive sanction: Beyond A Reasonable Doubt (ORS 33.065(9))
  - b. There is no right to a jury trial in a contempt proceeding, but the Respondent has all other constitutional and statutory protections, including the right to appointed counsel. (ORS 33.065(6))
5. Statute of Limitation to file contempt charge: Two years (ORS 33.135)

### **“Foreign” Restraining Orders:**

1. Statute Numbers: ORS 24.105 through 24.175
2. “Foreign Restraining Order”: ORS 24.190: “Foreign Restraining Order” means a restraining order that is a foreign judgment as defined by 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 a full faith and credit in this state.
    - i. **TRIBAL PROTECTION ORDERS:** Are “Foreign Judgments”. 18 USC 2265(a) mandates that all qualifying tribal protection orders shall be given full faith and credit by this state and be enforced by the court and law enforcement personnel of this state as if it were an order of the State of Oregon. Tribal orders are to be treated the same as any foreign state protection order. Ex parte orders and final orders both qualify.
    - ii. **QUALIFYING TRIBAL PROTECTION ORDERS:** Under 18 USC 2265(b), as with foreign states, qualifying tribal orders require that the tribe have jurisdiction over the parties and matter under the law of the tribe; and that the tribe afford the respondent reasonable notice and opportunity to be heard in a manner sufficient to protect the person’s right to due process.
  - b. “Restraining Order” means an injunction or other order 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.
    - i. “Restraining Order” includes temporary and final orders.
    - ii. **Validity in Oregon:** Except as otherwise provided in ORS 24.190(2)(a)(b), immediately upon arrival in this state of a person protected by a 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.

### **Mandatory Arrest:**

1. Statute Number: ORS 133.310
2. Mandatory Arrest on an Oregon Restraining Order: ORS 133.310(3): “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 107.716, 107, 718...and a true copy of the order and proof of service has been filed as required... and the person to be arrested has violated the terms of that order.”

3. Mandatory Arrest on a Foreign Restraining Order: ORS 133.310(4): “A peace officer *shall* arrest and take into custody a person without a warrant if the person protected by a foreign restraining order as defined in 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 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 officer has probable cause to believe that the person to be arrested has violated the terms of the order.”

**Other:**

1. Contempt adjudications are NOT convictions: State v. Reynolds, 239 Or App 313, 243 P3d 493 (2010): Defendant was found to be in contempt of a court order. A judgment reflected Defendant’s “conviction” for contempt. The Court of Appeals reversed. Contempt is not a “crime” therefore a finding of contempt is not a “conviction.” *See also, State v. Lam*, 176 Or App 149, 158 (2001): Contempt is not a crime, “rather, it’s a unique and inherent power of the court to ensure compliance with its orders.”