

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



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September 18, 2026

Dear Law Enforcement Officials,

This memo addresses personal protection orders (PPOs) and issues that arise as to their enforcement. Part I of this memo addresses common questions regarding PPOs in general, and part II addresses common questions regarding PPOs that are issued by other jurisdictions, including tribal courts.

Part I- PPOs generally

What types of PPOs are available?

Michigan residents have the ability to petition a circuit court within the family division for a PPO. There are 3 types of PPOs available:

- (1) Domestic Relationship PPO (MCL 600.2950);
- (2) Nondomestic Stalking PPO (MCL 600.2950a(1)); and
- (3) Nondomestic Sexual Assault PPO (MCL 600.2950a(2)).

What types of behaviors are prohibited by a PPO?

If a PPO is granted by the court, it stops the respondent from engaging in specific behaviors in relation to the petitioner. Common examples include:

- not appearing or interfering with the petitioner's employment or place of education, and/ or not assaulting or threatening the petitioner, purchasing or possessing a firearm, and/or threatening or assaulting children and pets.
- However, the specific conduct that is prohibited will be determined by the issuing court and will be indicated on the PPO.

When does a PPO become effective?

A PPO is effective and immediately enforceable anywhere in this state after being signed by a judge. MCL 600.2950(9); MCL 600.2950a(9).

When can a PPO be enforced and who can enforce them?

PPOs can be enforced immediately anywhere in Michigan by any law enforcement agency that has received a true copy of the order, is shown a copy of it, or has verified its existence on the LEIN. MCL 600.2950(22); MCL 600.2950a(22); MCL 600.2950(21); MCL 600.2950a(21).

Can law enforcement officers serve a PPO on a respondent?

If the individual restrained or enjoined has not been served, a law enforcement officer who knows that a PPO exists *may*, at any time, serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined of the existence of the PPO, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. MCL 600.2950(18); MCL 600.2950a(18).

Are there instances where law enforcement officer *must* serve a PPO on a respondent?

When responding to a call alleging a violation of a PPO, if the individual restrained or enjoined has not been served, a law enforcement agency or officer responding *shall* serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined of the existence of the PPO, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. MCL 600.2950(22); MCL 600.2950a(22).

What must an officer do when responding to a call regarding an alleged violation of a PPO?

When responding to an alleged PPO violation, an officer must:

- Enforce the PPO and immediately enter into LEIN that the individual restrained by the PPO has actual notice of it. MCL 600.2950(22) and MCL 600.2950a(22).
- File proof of service or proof of oral service with the clerk of court that issued the PPO. MCR 3.706(E); MCL 600.2950(22); MCL 600.2950a(22).
- If the respondent had not yet been served with the PPO, at the time of the alleged violation, he or she must be given an opportunity to comply with the PPO before the law enforcement officer makes a custodial arrest for violation

of the PPO. MCL 600.2950(22); MCL 600.2950a(22).

- However, if the respondent then fails to immediately comply with the PPO, the law enforcement officer has grounds to make an immediate custodial arrest. MCL 600.2950(22); MCL 600.2950a(22).

What happens if a respondent violates a PPO?

- Criminal contempt proceedings may be initiated by a warrantless arrest under MCL 764.15b. See MCL 600.2950(25); MCL 600.2950a(25).
- As discussed below in the next section, an officer may make an arrest of an individual named in a PPO without a warrant on reasonable cause to believe that the individual is violating or has violated the PPO. MCL 764.15b(1)(a)-(b).
- Further, an officer may make a warrantless arrest on grounds other than the alleged violation of the PPO. See MCL 764.15 (general provision authorizing warrantless arrest) and MCL 764.15a (authorizing warrantless arrest for domestic assault).

When can an officer make a warrantless arrest for a PPO violation?

- MCL 764.15b authorizes a peace officer to make a warrantless arrest when the peace officer has or receives positive information that another peace officer has reasonable cause to believe all of the following apply:
 - A PPO has been issued under MCL 600.2950, MCL 600.2950a, or is a valid foreign PPO, *and* the restrained or enjoined individual is violating or has violated one or more of the acts specifically prohibited in the PPO, and
 - The PPO was issued under MCL 600.2950 or MCL 600.2950a and “states on its face that a violation of its terms subjects the restrained or enjoined individual to immediate arrest and either of the following:
 - If the individual restrained or enjoined is 18 years of age or older, to criminal contempt of court and, if found guilty of criminal contempt, to imprisonment for not more than 93 days and to a fine of not more than \$500.00, or

- If the individual restrained or enjoined is less than 18 years of age, to the dispositional alternatives listed in . . . MCL 712A.18. MCL 764.15b(1).

Can an officer rely on LEIN information to make an arrest for a PPO violation?

Yes, an arresting officer's reliance on the LEIN information provides reasonable cause to believe that a respondent had notice of a PPO and had violated its provisions, thereby subjecting the respondent to an immediate arrest. See *People v Freeman*, 240 Mich App 235, 236–237 (2000).

What must an officer do after arresting a respondent for violating a PPO?

- Law enforcement agencies must collect biometric data of individuals arrested for criminal contempt of court for an alleged violation of a PPO. MCL 28.243(1)
- An officer is prohibited from issuing an appearance ticket for persons subject to detainment for violation of a PPO. MCL 764.9c(3)(b).

Part II- Enforcement of foreign PPOs issued by other jurisdictions.

What is a foreign PPO?

- A foreign protection order as “an injunction or other order issued by a court of another *state, Indian tribe, or United States territory* for the purpose of preventing a person's violent or threatening acts against, harassment of, contact with, communication with, or physical proximity to another person. MCL 600.2950h(a).
- However, the term foreign protection order *does not* include an order issued in another country. MCL 600.2950h(a).

Are foreign PPOs enforceable in Michigan?

Yes, a foreign PPO is deemed valid if it meets all of the following conditions:

- The issuing court had jurisdiction over the parties and subject matter under the laws of the issuing state, tribe, or territory, and

- Reasonable notice and opportunity to be heard is given to the respondent sufficient to protect the respondent's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided to the respondent within the time required by state or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights. MCL 600.2950i(1).

Can a tribal court issue a PPO against a person who is either a non-member of that tribe or a non-Indian?

Yes. Indian tribal courts may issue and enforce civil protection orders against any person—*Indian or non-Indian, tribal member or non-tribal member*—in matters arising in the Indian country of an Indian tribe. 18 USC 2265(e).

Is there a list of Indian tribes?

Yes. The federal Bureau of Indian Affairs' directory Tribal Leaders also identifies federally recognized Indian tribes (<https://www.bia.gov/service/tribal-leaders-directory>). The agency also publishes an annual list of "Indian Entities Recognized by and Eligible to Receive Services from the United States Bureau of Indian Affairs" in the Federal Register.

Are there Indian tribes and tribal courts in Michigan?

Yes. There are currently twelve federally recognized Indian tribes in Michigan and each tribe has a court:

1. Bay Mills Indian Community (<https://www.baymills.org/>)
2. Grand Traverse Band of Ottawa and Chippewa Indians (<https://www.gtbindians.org/>)
3. Hannahville Indian Community (<https://hannahville.net/>)
4. Keweenaw Bay Indian Community (<https://www.kbic-nsn.gov/>)
5. Lac Vieux Desert Band of Lake Superior Chippewa (<https://lvd-nsn.gov/>)
6. Little River Band of Ottawa Indians (<https://lrboi-nsn.gov/>)
7. Little Traverse Bay Bands of Odawa Indians (<https://ltbbodawa-nsn.gov/>)
8. Match-E-Be-Nash-She-Wish Band of Pottawatomi also known as the Gun Lake Tribe (<https://gunlaketribe-nsn.gov/>)
9. Nottawaseppi Huron Band of the Potawatomi (<https://nhbp-nsn.gov/>)
10. Pokagon Band of Potawatomi (<https://www.pokagonband-nsn.gov/>)

11. Saginaw Chippewa Indian Tribe of Michigan (<https://www.sagchip.org/>)

12. Sault Ste. Marie Tribe of Chippewa Indians (<https://www.saulttribe.com/>)

Does an Indian tribe have to be located in Michigan to enforce its tribal court's PPO in Michigan?

No. 18 USC 2265(a) does not limit full faith and credit to Indian tribes in an enforcing state. MCL 600.2950h(a) does not limit enforcement of foreign PPOs issued by Indian tribes in Michigan.

Which courts in Michigan can enforce foreign PPOs?

The family division of circuit court with sole and exclusive jurisdiction over cases involving foreign protection orders enforceable in Michigan under MCL 600.2950l. MCL 600.1021(1)(k).

How are foreign PPOs enforced?

- A valid foreign PPO shall be subject to the same enforcement procedures and penalties as if it were issued in this state. MCL 600.2950j(1).
- Law enforcement officers, prosecuting attorneys, and courts must enforce a foreign protection order using the same procedures used to enforce a PPO issued in Michigan, which is discussed above in Part I of this memo. MCL 600.2950l(1).
- Law enforcement officers, prosecutors, or court personnel acting in good faith have immunity from civil and criminal liability in any action arising from the enforcement of a foreign protection order. MCL 600.2950l(10).

Does a petitioner have to register a foreign PPO in Michigan before it can be enforced?

No. Prior registration in the enforcing jurisdiction and notice of such registration to the restrained individual are not prerequisites to according full faith and credit under 18 USC 2265(d)(2).

May a law enforcement officer rely on a copy of a foreign PPO?

Yes, a law enforcement officer may rely upon a copy of any protection order that appears to be a foreign protection order and that is provided to the law enforcement officer from any source if the putative foreign protection order appears to contain all of the following:

- (a) The names of the parties.
- (b) The date the protection order was issued, which is prior to the date when enforcement is sought.
- (c) The terms and conditions against the respondent.
- (d) The name of the issuing court.
- (e) The signature of or on behalf of a judicial officer.
- (f) No obvious indication that the order is invalid, such as an expiration date that is before the date enforcement is sought.

MCL 600.29501(3)

A law enforcement officer may also rely on:

- a petitioner's statement that the foreign protection order that the petitioner is presenting is effective, and
- the petitioner's or the respondent's statement verifying that the respondent received notice of the protection order.

MCL 600.29501(4)

Can a law enforcement office refuse to enforce a foreign PPO if the PPO does not appear in LEIN?

No, the fact that a putative foreign PPO that an officer has been shown cannot be verified on LEIN or the NCIC national protection order file **is not grounds** for a law enforcement officer to refuse to enforce the terms of the putative foreign PPO, unless it is apparent to the officer that the putative foreign PPO is invalid. MCL 600.29501(4).

Can a respondent be criminally charged for violating a foreign PPO in Michigan?

Yes, when enforcing a foreign PPO, a law enforcement officer shall maintain the peace and take appropriate action with regard to any violation of criminal law. The penalties provided for under MCL 600.2950 and MCL 600.2950a and . . . the probate code of 1939, . . . MCL 712A.1 to MCL 712A.32, may be imposed in addition to a penalty that may be imposed for any criminal offense arising from the same conduct. MCL 600.2950l(8).

What must a law enforcement officer do when asked to enforce a foreign PPO, but is not presented with a copy of the foreign PPO?

If a person seeking enforcement of a foreign PPO does not have a copy of the foreign protection order, the law enforcement officer shall attempt to verify through LEIN, or the NCIC protection order file, administrative messaging, contacting the court that issued the foreign protection order, contacting the law enforcement agency in the issuing jurisdiction, contacting the issuing jurisdiction's protection order registry, or any other method the law enforcement officer believes to be reliable, the existence of the foreign protection order, and all of the following:

- (a) The names of the parties.
- (b) The date the foreign protection order was issued, which is prior to the date when enforcement is sought.
- (c) Terms and conditions against the respondent.
- (d) The name of the issuing court.
- (e) No obvious indication that the foreign protection order is invalid, such as an expiration date that is before the date enforcement is sought.

MCL 600.2950l(5)

What happens after law enforcement is able to verify the existence of a foreign PPO?

A law enforcement officer shall enforce the foreign protection order if the existence of the order and the information listed under MCL 600.2950l(5) are verified, subject to MCL 600.2950l(9). MCL 600.2950l(6).

What happens if law enforcement is unable to verify the existence of a foreign PPO?

If a person seeking enforcement of a foreign protection order does not have a copy of the foreign protection order, and the law enforcement officer cannot verify the order as described in MCL 600.2950l(5), the law enforcement officer shall maintain the peace and take appropriate action with regard to any violation of criminal law. MCL 600.2950l(7).

What must a law enforcement officer do when presented with a foreign PPO if the respondent has not yet been served?

- If there is no evidence that the respondent has been served with or received notice of the foreign protection order, the law enforcement officer shall serve the respondent with a copy of the foreign protection order, or advise the respondent about the existence of the foreign protection order, the name of the issuing court, the specific conduct enjoined, the penalties for violating the order in Michigan, and, if the officer is aware of the penalties in the issuing jurisdiction, the penalties for violating the order in the issuing jurisdiction. MCL 600.2950l(9).
- Once notice is given, the law enforcement officer must:
 - Enforce the foreign protection order,
 - Provide the petitioner, or cause the petitioner to be provided, with proof of service or proof of oral notice,
 - Provide the issuing court, or cause the issuing court to be provided, with proof of service or proof of oral notice, if the address of the issuing court is apparent on the face of the foreign protection order or otherwise is readily available to the officer, and
 - Provide the LEIN or the NCIC protection order file entering agency or cause the LEIN or NCIC protection order file entering agency to be provided, with a proof of service or proof of oral notice” where the foreign protection order is entered into LEIN or the NCIC protection order file. MCL 600.2950l(9).
- If there is no evidence that the respondent has received notice of the foreign protection order, the respondent shall be given an opportunity to comply with the foreign protection order before the officer makes a custodial arrest for violation of the foreign protection order, and if the respondent fails to

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immediately comply with the foreign protection order, the law enforcement officer has grounds to make an immediate custodial arrest. MCL 600.2950l(9).

May a respondent be charged criminally in the federal court system for violating a PPO?

- Yes, a violation of a foreign protection order may also subject the offender to federal criminal prosecution under the Violence Against Women Act (VAWA), 34 USC 12291 et seq; 18 USC 2261 et seq.
- Please contact your local United States Attorney's office for questions regarding violations of federal criminal statutes related to the enforcement of PPOs, as this memo only addresses state law enforcement of PPOs.

Please know the Department of Attorney General stands ready to answer your legal questions as they pertain to enforcement of PPOs. We can be reached at 517-335-0800. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, reading "Danielle Hagaman-Clark". The signature is written in a cursive, flowing style.

Danielle Hagaman-Clark
Criminal Justice Bureau Chief