

1 same requirements and laws applicable to an accusatory instrument in a criminal proceeding”
2 and a warrant can be issued to compel the appearance of the defendant.

3 An accused has no right to a jury trial, but must be afforded appointed counsel if he is
4 indigent. Proof of contempt is beyond a reasonable doubt for imposition of either a remedial
5 sanction of confinement or a punitive sanction. The multiple prosecution provisions of ORS
6 131.515 apply to criminal contempts. State v. Thompson, 294 Or 528 (1983).

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8 The District Attorney’s Office has consistently opposed motions under ORS 137.225 to
9 set aside (expunge) contempt judgments or arrests for Violation of a Restraining Order (VRO).
10 In 2003 Circuit Court Judge Elizabeth Welch, Chief Family Law Judge, undertook serious
11 consideration of the issue and ultimately agreed with the state and denied the set aside motion
12 (See Exhibit #1). Central to her ruling was that that a VRO was not a criminal conviction and
13 that a violator of such an order “is not included in the classes of individuals described in ORS
14 137.225”.

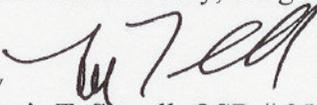
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16 Judge Welch relied primarily on the Supreme Court decision of State ex rel Hathaway v.
17 Hart, 300 Or 231 (1985). The Court of Appeals in Hathaway had concluded that contempt was a
18 “criminal action” under ORS 131.005(6) for purposes of ORS 161.505, defining an offense, but
19 that the criminal contempt proceeding of a VRO was not “a criminal prosecution.” State ex rel
20 Hathaway v. Hart, 70 Or App 541, 544 (1984).

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22 The Supreme Court accepted the latter position in affirming the Court of Appeals and
23 cited State v. State ex rel Dwyer v. Dwyer, 299 Or 108 (1985). However, the Supreme Court
24 rejected the Court of Appeals’ analysis that a VRO was a “criminal action” under ORS
25 131.005(6) but not a “criminal prosecution.” It is neither. The Supreme Court concluded, “the
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1 legislature intended to leave criminal contempts as unique proceedings.” State ex rel Hathaway
2 v. Hart, 300 Or at 238 (1985). More recently, the Court of Appeals also has held that contempt
3 is not a crime but rather that “it is a unique and inherent power of a court to ensure compliance
4 with its orders.” State v Lam, 176 Or App 149,158 (2001).

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6 Essentially, some contempt proceedings may have some of the trappings of a criminal
7 prosecution and conviction but are not themselves actual prosecutions for criminal offenses.
8 Defendant was not arrested for an offense contemplated by ORS 137.225. Thus, there is no
9 authority for the court to set aside the defendant’s record of arrest for this offense. This court’s
10 power to set aside arrest and conviction records derives from the statute. Springer v. State, 50 Or
11 App 5, 621 P2d 1213 (1981), Sup. Ct. review denied. The court has no inherent power to set
12 aside records of offenses not authorized by ORS 137.225. The defendant's motion should be
13 denied.
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