



# Full Faith and Credit for Protection Orders

Assisting Survivors with Enforcement Across  
Jurisdictional Lines



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## WHAT IS A PROTECTION ORDER?

The Violence Against Women Act (VAWA) defines a protection order as “*any injunction, restraining order, or any other order issued ... 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 ... including any support, child custody or visitation provision or order issued as part of a protection order ... pursuant to state, tribal, territorial or local law authorizing the issuance of an order or injunction for the protection of victims of domestic violence, sexual assault, dating violence or stalking.*” See 18 U.S.C. § 2266(5) (2006).



The VAWA definition of protection orders is broad and encompasses numerous types of injunctions or restraining orders that may be issued pursuant to the criminal, family, child welfare, and civil chapters of state, tribal, or territorial statutes.

Examples of protection orders include, but are not limited to:

- Conditions on bail or release, on probation or parole, and in criminal no contact orders in sexual assault, stalking, or domestic violence cases;
- “No contact” orders or “no violent contact” orders awarded during divorce proceedings and in divorce decrees;
- Safety directives in custodial or “parenting time” orders that prohibit or limit communication, proscribe threatening behavior, or require supervised visitation;
- Provisions in a spousal support order for wage attachment and establishing limits on obligor proximity to the applicant spouse;
- Mandates against surveillance or stalking by a person against whom a stalking or harassment order is issued; and
- Any civil restraining or protection order that is granted pursuant to a statute crafted to safeguard family or household members, intimate partners, and dating persons from further threats, physical or sexual abuse, harassment, or stalking by a person found to have inflicted the violence.

The duration of a protection order varies according to statute and the content of the order. The survivor may be a protected person in both a civil and a criminal protection order, expiring at different times. An order may expire on a date specified on the order or, for example, upon a child's 18th birthday, upon the abuser's completion of a criminal sentence, after enumerated days or years, or upon the death of the protected person(s).

***Simply stated, full faith and credit means that:*** A valid order of protection may be enforced where it is issued and in all 50 states, Indian tribal lands, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, the Northern Mariana Islands, and Guam. *See* 18 U.S.C. § 2265 (2006).

## **WHAT IS FULL FAITH AND CREDIT?**

Full faith and credit is a legal term that means a court in any **jurisdiction**<sup>1</sup> will honor and enforce orders issued by courts in other jurisdictions. Full faith and credit is *not* a new concept; it is included in Article IV, Section 1 of the United States Constitution. Under VAWA, all jurisdictions must give full faith and credit to valid protection orders issued by all other jurisdictions, including states, Indian **tribes**, or territories on behalf of survivors of domestic violence, sexual assault, stalking, and dating violence. Therefore, a valid protection order should be enforced as if it were the order of the enforcing state, tribe, or territory.

## **What does full faith and credit mean for survivors?**

VAWA's full faith and credit provision protects survivors' freedom of movement by requiring law enforcement and the courts to enforce protection orders throughout the country. Survivors may be in greater danger when they cross jurisdictional lines to work, attend school, visit family, travel, or relocate, because abusers frequently pursue or stalk them.

Proactive implementation of protection orders by survivors will enhance access to law enforcement and increase the likelihood that orders will be enforced swiftly in both issuing and non-issuing jurisdictions. Survivors who can produce a copy of the protection order for review by law enforcement may be more likely to obtain immediate assistance. Survivors may want to keep a copy of the order in a purse, wallet, car, residence, or even at their place of employment. Survivors should retain contact information about the issuing court, the docket number of the

<sup>1</sup> Legal terms are highlighted in the text. See the "Glossary of Terms" at the back of this brochure for definitions.

protection order, and the names and phone numbers of local police and advocates in the issuing and any likely **enforcing jurisdiction**.

### **What does full faith and credit mean for abusers?**

The full faith and credit provision of VAWA requires police and courts to treat protection orders issued in other jurisdictions as though they were issued by their own state, tribe, or territorial courts. This means that an abuser who had notice and the opportunity to be heard in opposition to issuance of the protection order, and who violates any of the civil or criminal protection orders encompassed by 18 U.S.C. § 2265, can be arrested and prosecuted according to the enforcing jurisdiction's laws.

### **What is required for a protection order to be eligible for full faith and credit?**

A protection order must meet the following conditions to be eligible for full faith and credit:

- The order was entered pursuant to a complaint, petition, or motion filed by (or on behalf of) a person seeking protection;
- The court that issued the order had **personal jurisdiction** over the parties and **subject matter jurisdiction** over the case; and
- The person against whom the order was issued must have had notice and an opportunity to be heard related to the allegations of abuse and the relief sought. 18 U.S.C. § 2265(b).

### **Which laws apply?**

**The jurisdiction that *issues* the order determines:**

- Who is eligible for protection;
- All the relief the court awards; and
- How long the order is in effect.

*Example:* A survivor obtains a protection order against a same-sex abuser in state A. The survivor then flees to state B, where same-sex partners are not eligible for protection orders. The order is entitled to full faith and credit in state B because state A (issuing jurisdiction) determined the survivor was eligible for an order. State B (enforcing jurisdiction) must enforce the out-of-state order.

*Example:* A court in state A issues a protection order prohibiting possession of any firearms. The abuser then tracks the survivor to state B, where courts cannot prohibit firearm possession under a protection order. The firearms prohibition provision of the protection order is enforceable

in state B. State A (issuing jurisdiction) determines the terms and conditions of the order, and state B (enforcing jurisdiction) must enforce the out-of-state order.

*Example:* A tribal court grants a survivor a lifetime order. Four years later, the survivor relocates to a state where the maximum duration of a protection order is two years. The protection order is enforceable in the state because the tribal court (issuing jurisdiction) determined that the survivor was entitled to a lifetime order. The state (enforcing jurisdiction) must enforce the order for the survivor's lifetime.

**The jurisdiction that *enforces* the order determines:**

- How violations of the order are handled;
- The arrest authority of responding law enforcement;
- Detention and notification procedures; and
- Penalties or sanctions for violations of the order.

*Example:* A survivor obtains a protection order in state A, where violation of a protection order is a misdemeanor crime. The survivor then visits a relative in state B, where violation of a protection order is prosecuted as criminal contempt. State B (enforcing jurisdiction) determines the sanctions for violations of the order; the abuser will be charged with criminal contempt.

*Note:* Whether or not the abuser is charged with violating the protection order, the abuser should be charged with any other crimes committed in the process of violating the protection order.

In order to promote full faith and credit of protection orders, many states, tribes, and territories have enacted their own laws (enabling legislation) to facilitate enforcement of protection orders issued in other jurisdictions. Almost all of the states, and some of the tribes and territories, now have such enabling legislation. Information on state laws can be found on the National Center on Protection Orders and Full Faith & Credit (NCPOFFC) website, [www.fullfaithandcredit.org](http://www.fullfaithandcredit.org).

State, tribal, or territorial, and federal laws coexist in this area. Under the Supremacy Clause of the United States Constitution, if a state or territorial law conflicts with federal law, the federal law supersedes the inconsistent state or territorial law. U.S. CONST. art. VI, cl. 2. As sovereign nations, Indian tribes assert that any resolution of conflicts of law in favor of the federal government is a matter of **comity** or contract, not supremacy.

### **Note on Protection Orders in Indian Country**

Tribal courts can issue both civil and criminal protection orders in cases of domestic violence, sexual assault, dating violence, and stalking; however, tribal courts do not have criminal jurisdiction over non-Indians. (See page 25 for further discussion.) States are required to recognize and enforce tribal court orders that meet the federal definition of a protection order.

### **State Jurisdiction in Indian Country**

Some tribes share concurrent jurisdiction over criminal and civil matters with the state government pursuant to Public Law 280 (18 U.S.C. §1162) or a similar federal conferring statute. Other tribes retain concurrent jurisdiction exclusively with the federal government. Note: Be sure to familiarize yourself with how concurrent jurisdiction operates in your region.

When the state shares concurrent jurisdiction with the tribe, state courts have authority to issue protection orders (both civil and criminal) in cases arising in Indian Country. In these circumstances, state law enforcement officers have the authority to enforce state orders and to enforce state criminal laws in Indian Country.

While the full faith and credit provision of VAWA makes it clear that a victim should not be required to obtain protection orders in both state and tribal courts, it may be important (for safety and strategy reasons) to let survivors know if state and tribal courts share concurrent jurisdiction. In some instances, getting more than one order might be the best strategy to ensure consistent enforcement across jurisdictional lines.

## **HOW SHOULD THE JUSTICE SYSTEM ENFORCE VALID PROTECTION ORDERS?**

### **Law Enforcement**

Officers are required to enforce protection orders issued by courts in other jurisdictions exactly the same way they enforce orders issued in their own jurisdictions. A protection order that is “valid on its face” is enforceable, whether presented by the protected person, acknowledged by the abuser, or found in a federal or state protection order database. Law enforcement is not required to verify the validity of the protection order before arresting or charging an abuser with a violation.

If a survivor presents officers a paper copy of a protection order for enforcement, the officers should determine whether the order is valid on its face by assessing who the relevant parties are, whether the order is still

in effect, and what relief the issuing court awarded. The officers should then determine whether the abuser violated the order and, if so, enforce the order pursuant to the laws of the enforcing jurisdiction. For example, if the enforcing jurisdiction's law provides for mandatory arrest where there is probable cause to believe a violation of the protection order occurred, officers should arrest the violator consistent with that law. The alleged violator should be charged with violation of a protection order or criminal contempt of the issuing state's protection order and be detained until a bail hearing.

Custodial detention pending review by a judge is particularly appropriate for cross-jurisdictional violations. Following, stalking, or transporting a victim across jurisdictional lines is an indicator of heightened risk. Enforcing officers should undertake a risk assessment related to the dangerousness or potential lethal risk posed by the offender who has crossed jurisdictional lines to violate a protection order. The risk evidenced by the assessment should be shared with the bail magistrate or protection order judge. Before the accused is released, the survivor should be given notice of charges filed, any release conditions imposed, and the expected time of release.

Law enforcement may arrest an abuser for violation of the protection order or for criminal statutes of the enforcing state, or both. Should law enforcement decline to charge the abuser with a violation of the protection order, and instead charge the abuser with a substantive crime based on the abuser's conduct, the survivor may choose to file a petition with the enforcing court to have the abuser held in contempt for conduct that violated the order. When both criminal charges and a contempt petition are pursued, care should be taken in the criminal contempt petition and testimony to avoid double jeopardy. Conduct cited in the contempt petition should be distinct from the conduct that is the basis for the criminal charge brought by the police. For example, law enforcement may charge the abuser with possession of a gun in violation of the issuing jurisdiction's order, and the survivor might cite a violation of the order by terroristic threats in the contempt petition.

Not all provisions in a civil protection order may be enforced by law enforcement in either the issuing or the enforcing state. Law enforcement may not have the authority to make warrantless arrests when an abuser violates a provision in a protection order related to custody or economic relief (i.e., transfer of possession of property, support, attorney fees, or compensation for losses). Nonetheless, a protected person may file a petition seeking compliance or civil contempt in the enforcing court if the abuser resides or is present in that jurisdiction (or the court otherwise has



personal jurisdiction over the abuser). If the court finds that the abuser has violated the protection order and has the capacity to comply with the award, the enforcing court may hold the violator in civil contempt and compel compliance or incarcerate the violator until such time as the violator complies with the custody or economic provisions of the protection order.

### **Enforcement by law enforcement officers**

***If the survivor has a paper copy of the order, officers should enforce it when it:***

- Contains the names of both parties;
- Specifies terms and conditions with which the abuser must comply;
- Contains the issuing court's name;
- Includes a signature of a judicial officer (e.g., judge, clerk, commissioner, magistrate, or peace officer);
- Includes the date it was issued; and
- Appears to be in effect because it has not expired or it is a permanent order.

***If the survivor does not have a paper copy of the protection order, officers might do one or more of the following, as necessary:***

- Ask the parties for confirmation of the order's existence, terms, and expiration date;
- Contact the local law enforcement agency or court in the issuing jurisdiction;
- Check to see whether the order has been entered into the issuing or enforcing jurisdiction's protection order registry or the National Crime Information Center Protection Order File (NCIC POF).

Although the federal law does not require verification, some enforcing jurisdictions may require verification, and these procedures should suffice.

***Responding officers should arrest the violator of a protection order that is valid on its face (or that has been verified) when the officers have probable cause to believe that the order has been violated and have the authority to make a warrantless arrest.***

***Assuming arrest authority and probable cause, officers should:***

- Arrest for all violations of the protection order and for any other crimes committed; and
- Alert the prosecutor of all crimes the abuser committed under the enforcing jurisdiction's criminal code and any potential federal domestic violence or firearm crimes.

**Immunity for law enforcement officers acting in good faith**

Most jurisdictions provide immunity for law enforcement officers acting reasonably and in good faith reliance on a protection order.

**Project Passport—Recognizable First Page for Protection Orders**

*Project Passport* was designed to improve recognition and enforcement of protection orders within and between states and tribes by encouraging them to adopt a recognizable first page for protection orders (i.e., by including common elements and format). Using a recognizable first page for protection orders helps strengthen the safety net for battered women and their children by offering greater consistency in the issuance and enforcement of protection orders. The model template for this first page was originally developed through a regional effort. Since the initial template was created, more than 30 states have adopted it into their forms. Other jurisdictions are in the process of adopting this format. Whether a jurisdiction has adopted the *Project Passport* model template or not, the orders issued by its courts are afforded full faith and credit and are enforceable by other states, tribes, and territories. For additional information on *Project Passport*, see the Resources section of this guide.

**How Tribal Law Enforcement Officers Enforce Protection Orders**

Generally, tribal law enforcement officers may arrest Indian offenders who violate protection orders (regardless of the issuing jurisdiction). However, the question of whether tribal officers have authority to arrest non-Indian offenders is complicated. Policies and procedures may differ from tribe to tribe. Although tribal courts do not have criminal jurisdiction over non-Indians, tribal police usually have authority to stop, detain, transport, and expel non-Indian offenders.

Tribal law enforcement officers can detain and deliver non-Indian perpetrators to state or federal authorities that have criminal jurisdiction over non-Indian offenders. Tribal law enforcement that is deputized by state or county law enforcement may enforce state law in addition to tribal

law. A “best practice” for advocates is to communicate with tribal law enforcement agencies to understand their particular policies or limitations and share that information with survivors.

## Judges

Under VAWA, courts must enforce a protection order as written by the issuing court, while applying the laws of the enforcing jurisdiction as to the method of enforcement and the charges filed against a violating abuser.

### When issuing protection orders, judges should:

- Use uniform forms generated within the jurisdiction;
- Issue orders that are explicit, clear, comprehensive, and legible;
- Include language in orders confirming that they meet the jurisdictional and due process requirements under 18 U.S.C. § 2265(b);
- Include notations in orders that the custody provisions meet the jurisdictional requirements of the **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)**(1997), the **Uniform Child Custody Jurisdiction Act (UCCJA)**(1968), and the **Parental Kidnapping Prevention Act (PKPA)** 28 U.S.C. § 1738A (1980);
- Inform both parties, orally and in writing, that the order is enforceable in all jurisdictions; that violations of the order may result in state, tribal, territorial, or federal sanctions wherever the violations occur; and that enforcement procedures may vary significantly between jurisdictions;
- Advise protected parties that they should seek further assistance and information on enforcement procedures when they plan to travel across jurisdictional lines because laws and procedures vary among states, tribes, and territories;
- Give notice to the **respondent** or accused that it may be unlawful to possess or purchase a firearm, including a rifle, pistol, revolver, or ammunition, while subject to a civil or criminal protection order;
- Review the ten federal firearm prohibitors and any state, tribal, or territorial law that proscribes possession or purchase of firearms. Note that state, tribal, or territorial law may be more restrictive than federal firearm prohibitions;
- Advise the respondent or accused of approved methods to surrender or transfer firearms;
- Provide an explanation of the “official use exemption” for government employees who must possess and use a firearm or ammunition in their employment; include a notice to surrender all personally owned or possessed firearms and ammunition pursuant to the jurisdiction’s process;

- Require respondents who fall within the official use exemption to submit proof to the court that they apprised their employer that they are precluded from possessing their employment-issued or required firearm except during working hours;
- Inform the respondent or accused of the process by which to seek return of firearms, and give the **petitioner** or survivor notice of the right to participate and the opportunity to be heard in all proceedings related to return of firearms and ammunition to the respondent or accused; and
- Advise both the protected party and the respondent or accused that if they have any questions about firearm prohibitions, they should consult with an attorney.

#### **When enforcing protection orders, judges should:**

- Enforce all the relief the issuing court granted, even if such relief would not be available under the enforcing jurisdiction's laws;
- Follow the enforcing jurisdiction's laws and procedures when imposing sanctions for violations of protection orders issued by the courts of other jurisdictions;
- Notify the issuing jurisdiction of the outcomes of any enforcement proceeding;
- Ascertain whether the respondent or accused is compliant with state and federal firearm prohibitions; and
- Impose adverse consequences upon finding violations of protection orders after full and fair hearings.

#### **Clerks of Court and Court Administrators**

Orders should be presumed valid. Staff should be prepared to register orders presented by the survivor or accept orders e-mailed or faxed from the issuing jurisdiction. If there are any questions concerning an order, the clerk may contact the issuing court.

#### **Prosecutors**

In most instances, local, state, tribal, and territorial prosecutors are responsible for prosecuting violations of protection orders issued within and outside of their jurisdiction.

#### **Prosecutors should:**

- Work to help ensure survivors' safety and hold abusers accountable for their actions;

- Participate in compliance review hearings, and in cooperation with probation staff, provide the court with complete information about offender compliance with, or violation of, both civil and criminal protection orders issued in that jurisdiction;
- Obtain information concerning the validity and content of any protection order from the survivor, local law enforcement, and the issuing jurisdiction;
- Obtain various documents from courts issuing civil protection orders in other jurisdictions, including pleadings, orders, proof of service, counsel of record, compliance documents, violations charged, and outcomes. Similarly, obtain documents from criminal courts related to criminal protection orders;
- Obtain information about all pending criminal charges, outstanding warrants, prior convictions, or unexecuted sentences in the issuing and any enforcing jurisdictions and in the federal system, using databases such as the centralized protection order database, “wants and warrants” databases, and the Interstate Identification Index (III); and
- Prosecute alleged violations and crimes in accordance with the enforcing jurisdiction’s laws and procedures.

Some violations of protection orders may also qualify for federal prosecution under VAWA’s federal domestic violence crimes. (See page 31 of this guide.) Local, state, tribal, and territorial prosecutors should contact their federal counterparts and establish working relationships for determining when and how a case should be referred to the U.S. Attorney’s office or the Bureau of Alcohol, Tobacco, Firearms and Explosives. Prosecutors should develop memoranda of understanding or other written agreements to establish clear procedures for federal, state, tribal, or territorial cooperation. Decisions about whether to try a particular case in state, tribal, territorial, and/or federal court will depend on a variety of factors, including differences in detention capacity; resources available to investigators; witness protection options; economic supports for survivors; the adequacy of local, state, tribal, territorial, or federal remedies; and sentencing options.

### **Are all protection orders entered into local, state, tribal, and/or federal databases?**

Not all states, tribes, territories, and localities have developed computerized databases that contain records of current, valid protection orders issued or registered within the jurisdiction. Some jurisdictions keep archived records of expired orders, showing prior court action and documenting a history of domestic violence. Such archived records

may help courts determine whether to issue, modify, extend, or dismiss protection orders. These records may also help law enforcement assess probable cause that a violation has occurred, particularly where a paper copy of a current order is not immediately available.

If a centralized (state, tribal, or territorial) database is accurate and up-to-date, law enforcement can access it to verify the existence of a protection order if the survivor does not have a paper copy, if the paper copy is not clear, if it does not appear to be valid, or if the respondent or batterer alleges the order is not valid, was not served, or has expired. Centralized protection order databases are often linked to state, tribe, or territorial criminal history databases. Not all jurisdictions have centralized databases or registries of protection orders. Officers must be prepared to take other steps to determine the validity of an order.

NCIC POF was established in 1997 by the FBI to serve as the national registry of protection orders. The national registry is a limited tool, both because participation is voluntary and because NCIC POF requires that orders contain certain data (e.g., a numeric indicator such as a birth date, a Social Security number, or a driver's license number) to be entered into the system. Therefore, not all valid, current civil and criminal protection orders are eligible for entry into NCIC POF. In addition, there sometimes is a delay between issuance of the order and its entry into the state, tribal, or territorial central database or NCIC POF. Further, NCIC POF records

### **Tips Regarding NCIC POF**

Many states, tribes, and territories are not yet contributing to NCIC POF; and even for jurisdictions that are contributing to NCIC POF, checking NCIC POF or verifying with the centralized state, tribe, or territorial database may not result in an affirmative verification, for reasons such as these:

- Not all police departments or judicial districts participate in a centralized database entry or NCIC POF;
- Not all the relief awarded is listed in the centralized database or NCIC POF;
- Data fields in the centralized database may be incomplete or erroneous;
- Data fields in the centralized registry and NCIC POF are frequently incompatible; or
- There can be a time delay between issuance of the order and its entry into the state, tribal, or territorial central database or NCIC POF.

Note: Advocates should work with survivors to make certain that protection orders are delivered to NCIC POF.

do not show all the relief granted in a protection order. NCIC POF does not contain provisions such as custody, child support, or economic awards to the petitioner. Law enforcement officers who access NCIC POF to confirm the status of an order must be aware of its limitations and look to other resources to ascertain the full range of relief contained in each order.

### **Does a protection order need to be registered in a jurisdiction to be enforced?**

**Registration or filing** of protection orders cannot be a prerequisite for enforcement. 18 U.S.C. § 2265(d)(2). Therefore, courts and law enforcement officers must enforce protection orders issued by other states, tribes, and territories, even if they have not been registered or filed in the enforcing jurisdiction. Contrary to federal law, some jurisdictions may still require registration of protection orders issued by other jurisdictions. Advocates should be prepared to discuss with survivors the benefits and risks of registration in the enforcing jurisdiction.

**Benefits of Registration.** Registration may facilitate immediate enforcement by courts and law enforcement agencies. If the order is entered into the enforcing jurisdiction’s protection order registry, the order will be available to law enforcement officers even if a paper copy is not available at the scene. If the enforcing jurisdiction enters its orders into NCIC POF, it may also prevent the abuser from purchasing firearms and may facilitate enforcement in other jurisdictions.

**Risks of Registration.** Survivors should be advised that filing or registering protection orders in a non-issuing jurisdiction can be dangerous, especially

### **Tribal Court Recognition and Enforcement**

Federal law does not require registration or domestication of protection orders issued by states, territories, or other tribal nations prior to enforcement. Some tribal courts recognize or domesticate orders from other jurisdictions under the legal principle of comity.

Tribes retain “full civil jurisdiction to enforce protection orders . . . in matters arising within the authority of the tribe.” 18 U.S.C. § 2265(e). Indian law enforcement and courts may enforce protection orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms. *Id.* Determining whether a tribal court has jurisdiction to enforce foreign protection orders can be complicated.

if survivors want to keep their whereabouts confidential. Although VAWA expressly prohibits sending notice of the registration of protection orders to persons against whom protection orders were awarded, some courts may still notify abusers, contrary to federal law. *See* 18 U.S.C. § 2265(d)(1).

If a survivor does choose to register the order, many jurisdictions require a **certified copy** to do so. A certified copy of a protection order generally contains a stamp, seal, or signature of the issuing judge or clerk of court and a notation that the copy is an authentic duplicate of the original order of the court. VAWA does not require certified copies of orders as a prerequisite to enforcement.

### **Internet Prohibition**

VAWA prohibits states, Indian tribes, and territories from posting or publishing any information on public Internet sites regarding the registration, filing, or issuance of a protection order in both the issuing and enforcing jurisdictions if the posting is likely to “publicly reveal the identity or location of the party protected under such order.” 18 U.S.C. § 2265(d)(3). However, information and orders generated by law enforcement and courts that are contained in secure governmental registries (web-based or otherwise) may be shared with other governmental entities for the purpose of protection order enforcement.

Even without Internet publication of protection orders, registration in enforcing jurisdictions may risk disclosure of the protected survivor’s relocation to that jurisdiction. Since most protection orders are public records, a diligent abuser can locate a survivor by searching court records (in person or upon request of court clerk) in jurisdictions where the abuser suspects the survivor may be found.

### **Can jurisdictions charge the petitioner fees for filing and service of protection orders?**

VAWA prohibits states, tribal nations, and territories that receive federal STOP<sup>2</sup> or Community Defined Solutions (CDS<sup>3</sup>) funds from imposing fees on protection order issuance and implementation. In other words, courts cannot charge for filing, issuance, service, witness subpoenas, registration, and other costs associated with protection orders. The prohibition requires law enforcement to serve protection orders on respondents without any payment of service fees by survivors both within the issuing jurisdiction and in enforcing states, tribal lands, and territories.

<sup>2</sup> The STOP (Services Training Officers Prosecutors) Violence Against Women Formula Grant Program (STOP Program) was initially authorized under the Violence Against Women Act of 1994 (VAWA) and reauthorized and amended by the Violence Against Women Act of 2000 (VAWA 2000) and by the Violence Against Women Act of 2005 (VAWA 2005). The STOP Program promotes a coordinated, multidisciplinary



However, costs associated with protection orders may later be assessed against respondents or offenders.

Note: Any jurisdiction receiving funds under the STOP grants or CDS grants must certify that *“their laws, policies and practices do not require” survivors of domestic violence, stalking, or sexual assault to “bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the state, tribal, or local jurisdiction.”* 42 U.S.C. §§ 3796gg-5(a)(1), 3796hh(c)(4).

### **Can persons subject to a protection order possess a firearm?**

It is against federal law for anyone subject to a current qualifying protection order to possess firearms and/or ammunition for the duration of that order. For purposes of the federal firearm prohibition, a protection order must meet the following conditions: (i) the protected party and the respondent must be in a qualifying relationship; (ii) the order must have been entered after a hearing of which the respondent had notice and an opportunity to be heard; (iii) the order must restrain the respondent from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place the protected party in reasonable fear of bodily injury to the partner or child; and (iv) the order must include a finding that the respondent represents a credible threat to the physical safety of such intimate partner

approach to enhancing advocacy and improving the criminal justice system’s response to violent crimes against women. It encourages the development and improvement of effective law enforcement, prosecution, and court strategies to address violent crimes against women and the development and improvement of advocacy and services in cases involving violent crimes against women. By statute, each state and territory is awarded a base amount of \$600,000. Funds remaining after the allocated base amounts have been distributed are awarded to states and territories based on population. The most accurate and complete data compiled by the United States Bureau of the Census is used to determine the state populations. By statute, Indian tribal populations are not included in the population count. OVW Grant Programs. United States Department of Justice, Office on Violence Against Women <http://www.ovw.usdoj.gov/ovwgrantprograms.htm> (accessed January 5, 2010).

<sup>3</sup>The Arrest Program has been replaced by the Community Defined Solutions (CDS) grant program. The Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program (Arrest Program) was initially authorized under the Violence Against Women Act of 1994 (VAWA). The Arrest Program recognizes that domestic violence, sexual assault, dating violence, and stalking are crimes that require the criminal justice system to hold offenders accountable for their actions through investigation, arrest, and prosecution of violent offenders, and through close judicial oversight of offender behavior. This discretionary grant program is designed to encourage state, local, and tribal governments and state, local, and tribal courts to treat domestic violence, dating violence, sexual assault, and stalking as serious violations of criminal law requiring coordination with nonprofit, nongovernmental victim advocates and representatives from the criminal justice system. This program challenges the whole community to communicate, identify problems, and share ideas that will result in new responses and the application of best practices to enhance victim safety and offender accountability. OVW Grant Programs. United States Department of Justice, Office on Violence Against Women <http://www.ovw.usdoj.gov/ovwgrantprograms.htm> (accessed January 5, 2010).

or child; or must expressly prohibit the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury. 18 U.S.C. § 922(g)(8).

There is an “official use exemption” to the § 922(g)(8) prohibition that allows law enforcement and military personnel who are subject to a current protection order to possess their service weapon while on duty. For the exemption to apply, the personnel must be authorized or required to receive or possess a duty weapon to perform their official duties. The authorization must be pursuant to federal, state or local statute, regulation, or official departmental policy. 18 U.S.C. § 925(a)(1). The official use exemption does not apply to any personal firearms.

Some departments have policies whereby officers subject to this prohibition sign their service weapons out at the beginning of their shifts and return the service weapons at the end of their shifts for as long as the protection order is in place. Even if the service weapon is purchased

### **Qualifying relationships include where the petitioner is:**

- A spouse or former spouse of the respondent or defendant;
- A person who lives or who has lived with the respondent or defendant (i.e., who resides or resided together in a sexual or romantic relationship);
- A child of the respondent or defendant, a child of the intimate partner, or a child in common of the respondent or defendant and the intimate partner (including where parental rights have been terminated);
- A person with whom the respondent or defendant has or had a child in common (regardless of whether they were married or cohabitated).

### **A qualifying relationship does not include:**

- Boyfriends or girlfriends who do not live together or have never lived together;
- Elder abuse;
- Brothers who abuse siblings, uncles who abuse nieces and nephews, grandparents who abuse grandchildren, etc.;
- Roommates, neighbors, or strangers.

Note: These lists of relationships are not exhaustive and are examples used to illustrate the types of relationships that may trigger the federal firearm prohibition. See 18 U.S.C. § 921(a)(32) and 18 U.S.C. § 922(g)(8).



by the officer, rather than the department, the officer is subject to the exemption. State or local departmental policy may be more restrictive than § 922(g)(8) and may preclude possession of a service weapon by a police officer who is the subject of a protection order.

VAWA requires that courts provide offenders subject to qualifying protection orders with notification of the federal, state, and local firearm and ammunition prohibitions. Offenders should be notified of the prohibitions arising from civil and criminal protection orders at all stages of each legal proceeding. States and territories must certify that their courts have policies and practices related to civil and criminal protection orders that provide notification to domestic violence offenders regarding federal (e.g., 18 U.S.C. § 922(g)(8)-(9)), state, and local laws prohibiting the possession, ownership, or control over firearms and ammunition.

One way that courts can provide such notification in civil and criminal protection orders is by printing the following conspicuously on all protection orders issued:

As a result of this order, it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition pursuant to federal law under 18 U.S.C. § 922(g)(8) [and/or state law]. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.

Advocates should advise survivors and the general public about the elevated risks posed by firearms to the health and survival of battered women, their children, and interveners. Survivors may elect to request specific protection order provisions to divest batterers of their firearms. Advocates must understand the policies and protocols in their jurisdictions for search and seizure, removal, transfer, retention, return, and destruction of firearms owned or possessed by batterers. It is important for advocates to be prepared to have a comprehensive discussion about firearms with their clients.

### **How are states, tribes, and territories implementing the federal full faith and credit law?**

Most states and many tribes and territories have enacted full faith and credit laws (i.e., enabling legislation) to implement VAWA. Advocates must be familiar with their own jurisdiction's laws, as well as those of neighboring jurisdictions. Some jurisdictions have also developed enforcement protocols. Advocates should be familiar with these protocols to provide survivors accurate information regarding enforcement. To receive a copy of state enabling legislation contact the NCPOFFC at [ncffc@bwjp.org](mailto:ncffc@bwjp.org) or go to the NCPOFFC website, [www.fullfaithandcredit.org](http://www.fullfaithandcredit.org).

## **TIPS AND RESOURCES FOR ADVOCATES**

### **What does full faith and credit mean for advocates?**

Full faith and credit may be a passport to safety for many survivors, so advocates must understand how it works and be familiar with state, tribal, territorial, and federal law. As part of all risk assessment and safety planning, advocates must share information about protection order enforcement with survivors and advise them of potential elevated risks when abusers follow or stalk them across jurisdictional lines. Abusers who are determined and willing to cross state, tribal, or territorial lines in pursuit of survivors may be among the most dangerous offenders. With information about full faith and credit, survivors can make more informed decisions about their safety strategies.

### **Risk Assessment and Safety Planning**

Advocates should help survivors assess the dangerousness of their situations and develop safety plans and implementation strategies. Because most survivors will travel across jurisdictional lines, full faith and credit issues must be a part of all safety planning.

## Assessing Danger

Consider the following factors in determining the level of danger or lethality of the abuser:

- Threats of, and any plans for, homicide and/or suicide;
- Possession of, or access to, weapons;
- Stalking;
- Obsessive or desperate attachment to the survivor;
- Destruction of the survivor's property;
- History of domestic and sexual violence, stalking, or violent criminal conduct;
- Significant drug or alcohol consumption;
- Depression or other mental illness; and
- Abuse or killing of animals, especially companion pets.

Risk assessment should consider past, emerging, and escalating risk. It might consider the risk posed by abusers in all the locations in which survivors live their lives (e.g., home, school, church, work, car, store, sports venues). Risk is not fixed. It varies as the lives and circumstances of the abuser and the survivor change. Risk assessment is critical when a survivor is separating or relocating. Risk assessment should be ongoing.

Abusers may take extraordinary measures to locate and regain control over survivors.

## Safety Planning

Advocates should help survivors develop detailed, flexible, and practical safety strategies for themselves and any children or pets. Safety planning should address the following full faith and credit issues:

- Survivors should carry a certified copy of the protection order and proof of service so that they can show these to law enforcement and courts, whether they are in the issuing or an enforcing jurisdiction.
- The protection order should contain critical content (e.g., personal and subject matter jurisdiction, relationship of the abused and assailant, and findings regarding assaults, threats, use of weapons) to expedite enforcement across jurisdictions.
- Custody, visitation, and parenting rights provisions in protection orders should be detailed and sufficient for state and federal full faith and credit and UCCJA/UCCJEA requirements.
- The first page of the protection order should be consistent with the Project Passport template, and numeric identifiers of the abuser should appear on the first page of the order.
- Advise survivors that protection orders are not self-implementing. Survivors may choose to introduce themselves to patrol

supervisors in the police precinct(s) likely to be called upon to enforce the protection order. Advocates might obtain the name and contact information of senior officers with whom survivors may speak if they experience difficulty with enforcement.

- Be familiar with the laws and policies regarding optional registration or filing of protection orders in the issuing and potential enforcing jurisdictions, and discuss benefits and risks of registration.
- To facilitate implementation and enforcement of the protection order, locate phone numbers for domestic violence programs, law enforcement, legal assistance, and court personnel, both in the issuing jurisdiction and wherever the survivor may travel or relocate.

Survivors should identify people in their community who are willing to assist in implementation of the protection order. Friends, family, neighbors, co-workers, school administrators, athletic coaches, and faith leaders are often good candidates for implementation support. A survivor might share the contents of their protection order with volunteer supporters and advise them of the interventions the survivor would prefer if they witness abuse, stalking, or threats by the person subject to the protection order.

It is important that first responders, hotline staff, and advocates offer survivors informed assistance in considering safety strategies. First responders and advocates may have a unique understanding of the barriers to enforcement and may be able to suggest strategies to circumvent such barriers. Law enforcement and advocates should invite risk assessment and safety planning each time they communicate with survivors.

### **Risk assessment and safety planning are ongoing processes.**

#### ***Ex Parte* (Temporary or Emergency) Protection Orders**

An *ex parte* protection order is entitled to full faith and credit when the abuser has notice and has or will have an opportunity to be heard “within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent’s due process rights.” 18 U.S.C. § 2265(b)(2).

#### **Consent Orders**

If a court issues a valid protection order on behalf of only one party, federal law does not require that the order include specific findings of abuse to be enforceable across jurisdictional lines. This means that if a

survivor files a petition for a protection order and the abuser consents or agrees to entry of the order, even without admitting to the abuse, the order is still entitled to full faith and credit.

### **Default Orders**

Some orders may be issued without the respondent present. These orders may be entitled to full faith and credit. If respondents do not appear at a scheduled hearing of which they had prior notice or service, as required by law, and the court enters an order against them by default, the order is entitled to full faith and credit.

### **Mutual Orders**

Sometimes courts issue a single protection order that includes prohibitions or relief against both the petitioner and respondent, such as mutual no contact provisions. The full faith and credit provision of VAWA requires special safeguards for enforcement of this type of order across jurisdictional lines. Under the federal law, an order should be enforced only against the respondent and not the petitioner, unless the respondent cross-filed a separate, written pleading, complaint, or petition for a protection order and the issuing court made specific findings that both parties abused each other and were therefore entitled to protection from further abuse. 18 U.S.C. § 2265(c).

- Advocates who are working with a survivor whose abuser filed a petition first should help the survivor file a **cross-petition** so the court can make a finding that the survivor is entitled to relief and issue an order that can be enforced across jurisdictional lines.
- Another option is for a survivor to file a separate petition so the survivor can get a separate docket number and an order that will be entitled to full faith and credit.
- If appropriate, advocates should be prepared to help survivors appeal any order entered against them.

### **Custody Provisions**

Protection orders often include terms that award temporary custody of minor children to the survivor. The federal law is clear. Enforcing courts and law enforcement must enforce custody provisions within protection orders. Full faith and credit applies to:

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. 18 U.S.C. § 2266(5)(B). Advocates might remind attorneys and courts of the importance of issuing custody provisions in protection orders that comply with the protection order statutes in the issuing state, tribe, or territory. Thus, if pick up of children is permitted or mandated by law enforcement under the enforcing jurisdiction's laws, then that is the procedure to be followed for an order being enforced. If a separate court order is required to allow law enforcement to pick up the children, then the survivor would need to follow those steps to have the custody provision enforced.

Advocates may further advise survivors that custody directives in protection orders may have a more limited life than the protection order itself. Thus, it is important that a survivor discuss the ramifications of a short-term custody order with an attorney. The purpose is to evaluate whether the custody provision issued in the protection order can be extended for an additional period or whether the best legal strategy may be to seek a custody order pursuant to family or child welfare law.

Custody matters are often very complex. Advocates should encourage survivors to seek legal assistance. Referrals to attorneys with expertise in family law, custody, domestic violence, sexual assault, stalking, and dating violence are critical so that child and adult survivors can obtain the protections required for safe visitation.

Advocates can help survivors protect their children in the following ways:

- Find a lawyer to represent them through legal services, local bar associations, or by calling the local domestic violence shelter, state domestic violence coalition, law schools, or volunteer lawyer programs for referrals.
- Find a trusted friend or attorney to accept service after they leave the issuing jurisdiction in case abusers attempt to modify or vacate the protection order, or seek a custody order under the family code.
- Find a trusted friend or attorney to receive monetary relief and secure the return of property granted in a protection order.
- Remind judges and policymakers that abusers often use children to manipulate, control, and punish their partners. Therefore, it is critical for courts to craft appropriate orders to protect vulnerable children.

### **Criminal Protection Orders**

The full faith and credit provision of VAWA applies to valid criminal protection orders. A criminal protection order may be part of pretrial release orders, bail or bond conditions, or be incorporated into conditions of sentencing, probation, or parole.



Enforcing criminal protection orders across state, tribal, or territorial lines may be difficult. Statutory and case law varies from one jurisdiction to another as to the authority of police officers to make warrantless arrests for violations of criminal protection orders, particularly those issued in other jurisdictions. If an abuser violates a criminal protection order across jurisdictional lines, the enforcing jurisdiction can either prosecute the abuser for violation of the protection order, or charge the abuser with a crime (other than the protection order violation) committed in the enforcing jurisdiction. The enforcing jurisdiction may arrest and hold the violator for extradition, a formal legal process to send the violator back to the issuing jurisdiction. Extradition is unlikely to occur when the underlying charge is a misdemeanor, rather than a felony crime. The prosecutor in the enforcing state may also make a referral for federal prosecution pursuant to the domestic violence and stalking crimes in VAWA or other federal criminal statutes.

Jurisdictions also vary considerably in providing notice to the survivor about the protective conditions on court orders of release, probation, or parole, such as criminal protection orders. It is important that court staff give survivors immediate notice of all court orders entered in criminal proceedings against their assailants. Criminal protection orders should be delivered to survivors by methods each survivor designates as safe and efficient (e.g., e-mail, telephone, fax, or hand delivery). Few courts enter criminal protection orders into the jurisdiction's court database or law enforcement registry of protection orders. Thus, police, probation, and other judicial officers may be unable to readily confirm an order's content or validity unless the issuing court has entered the order and offers accessible methods of verification.

### **Tribal Court Jurisdiction**

Tribal criminal jurisdiction is further complicated in at least two significant ways:

1. Tribal courts lack criminal jurisdiction over non-Indians. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).
2. The Indian Civil Rights Act limits tribal sentencing authority to a maximum penalty of up to one year of imprisonment and/or a \$5,000 fine. 25 U.S.C. § 1301 (1968).

**The following charts provide an overview of the authority of tribes, states, and the federal government to prosecute for offences occurring on tribal land.**

## Three Steps to Determine Tribal Court Civil Jurisdiction to Enforce Foreign Domestic Violence Protection Orders

Hallie Bongar White - Southwest Center for Law and Policy

**Step 1:** is the **underlying order valid** and entitled to Full Faith and Credit enforcement under 18 U.S.C. § 2265 of the Violence Against Women Act?

If yes,



**Step 2:** Does the tribal court have **personal jurisdiction** over the defendant because:

- a.) the defendant has “minimum contacts” with the tribe (e.g. violated the order on tribal lands, is present on tribal lands, is doing business on tribal lands, etc.)? **or**
- b.) the defendant has consented to the jurisdiction of the court or waived any objections to the exercise of personal jurisdiction in this matter by:
  - 1.) voluntary appearing before the tribal court **or**
  - 2.) filing a motion, response, answer, or pleading in tribal court?

If yes,



**Step 3:** Does the tribal court have subject matter jurisdiction over the defendant because the violation of the order occurred within the territorial jurisdiction of the tribal court and the defendant:

- a.) is a member of or eligible for membership with that tribe? **or**
- b.) is a member of another tribe? **or**
- c.) is a non-indian **and:**
  - 1.) the defendant has entered into a consensual relationship with the tribe or its members through commercial dealing, contracts, leases or “other arrangements” (e.g. is married to a tribal member, has a child in common with a tribal member, is employed by the tribe, etc.)? **or**
  - 2.) the conduct of the violation threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe?

**If you have answered “Yes” to all three questions above, the tribal court has jurisdiction to enforce the foreign domestic violence protection order.**

For additional information about tribal court civil remedies for violation of protection orders please see: Creative Civil Remedies Against Non-Indian Offenders in Indian Country at: [www.swclap.org/articles](http://www.swclap.org/articles)

## Criminal Jurisdiction In Indian Country\*

### Crimes Committed By Indian\*\* Perpetrator

<p><b>Major Crimes Act Crimes (18 U.S.C. § 1153) and DV by Perpetrators With 2 Or More DV Convictions</b></p>	<p><b>Other Crimes</b> (domestic violence, protection order violations, etc.)</p>	<p><b>Tribes Subject To Mandatory Public Law 280 (18 U.S.C. § 1162)</b></p>
<p><b>Indian Victim</b> = Tribal/Federal (Concurrent)</p>	<p><b>Indian Victim</b> = Tribal (Exclusive)</p>	<p><b>Indian Victim</b> = Tribal/State*** (Concurrent)</p>
<p><b>Non-Indian Victim</b> = Tribal/Federal (Concurrent)</p>	<p><b>Non-Indian Victim</b> = Tribal/Federal (Concurrent)</p>	<p><b>Non-Indian Victim</b> = Tribal/State*** (Concurrent)</p>

### Crimes Committed By Non-Indian Perpetrator

<p><b>Indian Victim</b> Federal (Exclusive)</p> <p><b>PL280 Jurisdictions = State***</b></p>	<p><b>Non-Indian Victim</b> State (Exclusive)</p>
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\***Indian Country** (18 U.S.C. § 1151): (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; (b) all dependent Indian communities within the border of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

\*\***Indian**: Generally, a person who is a citizen/member of a federally recognized tribe or who is eligible for enrollment with a federally recognized tribe.

\*\*\***Note**: States may exercise jurisdiction over Indian Country crimes in PL280 states unless jurisdiction has been retroceded under 25 U.S.C. § 1323(a) ("Retrocession"). If the Attorney General has assumed federal jurisdiction under 18 U.S.C. § 1162(d), then there is also federal jurisdiction.

It is recommended that advocates work with tribal police, prosecutors, and courts (and their state counterparts) to devise interjurisdictional strategies to hold perpetrators accountable and to promote survivor safety. In some communities, tribal police and state police have worked to cross-deputize officers to enable officers to assist each other in search and seizure, service, arrest, investigation, trial testimony, and enforcement. Some tribes have established civil contempt procedures by which tribal courts can compel perpetrator compliance with protection orders.

### **Military Protection Orders**

Military protection orders are treated differently than protection orders issued by states, tribes, or territories. Military protection orders are enforceable only on the base where they are issued. These orders do not meet the due process requirements for full faith and credit because the abuser is not given notice and the opportunity to be heard by command staff that issued the military protection order. However, state, tribal, and territorial protection orders are afforded full faith and credit on military installations. In December 2002, Congress enacted the Armed Forces Domestic Security Act, 10 U.S.C. § 1561a(a), which states that “[a] civilian order of protection [issued by a state, tribal or territorial court] shall have the same force and effect on a military installation as such order has within the jurisdiction of the court that issued such order.” The Act also directed the Secretary of Defense to issue regulations for implementation. 10 U.S.C. § 1561a(c). Military police are authorized to enforce civilian (state, tribal, or territorial) protection orders issued against service members.

### **Issuance of Comprehensive Protection Orders**

- Encourage the court to use standardized protection order forms where available.
- Work with the court and the survivor to ensure that the terms of the order are clear and specific.
- Advocate for comprehensive relief as requested by survivors; especially consider custody, financial support, property allocation, and restitution for medical expenses and property damage as a result of the abuse.
- Ask the court to include statements in the protection order that:
  - The order is enforceable within and outside the jurisdiction;
  - The relationship between the survivor and the abuser falls within the range of eligible protected persons under state, tribal, or territorial and federal law;

- Indicate that the conduct of the respondent or accused placed the petitioner in reasonable fear of bodily injury to the petitioner or the child or represented a credible threat to the physical safety of the petitioner or the child;
  - Expressly prohibit the use, attempted use, or threatened use of physical force against the petitioner or the child that would reasonably be expected to cause bodily injury and/or restrains the respondent or accused from harassing, stalking, or threatening the petitioner or the child;
  - Warn the respondent or accused that crossing jurisdictional lines to violate the order may be a federal crime under VAWA;
  - Specify that the custody provisions are in compliance with the UCCJEA (or UCCJA) and the PKPA;
  - Affirm that the court had jurisdiction (over the parties and subject matter) to issue the order; and
  - Recite that the respondent or accused had notice and an opportunity to be heard.
- Should the survivor want firearms removed from the abuser, urge that the order include a prohibition against firearm possession and ownership, where possible, under the laws of the issuing jurisdiction. Encourage the court to give clear notice to the respondent that purchase or possession of a firearm may violate provisions of the Gun Control Act, 18 U.S.C. § 922(g)(8)-(9), and any applicable state or local law.
  - Work with the court and the survivor to ensure that the order includes the required data for entry into NCIC POF, such as the respondent's birth date, Social Security number, or driver's license number. Numeric identifiers can be found on documents such as pay stubs, insurance cards, local tax databases, or child support enforcement records.

### **Registration in an Enforcing Jurisdiction**

- Help survivors find out about any registration requirements in the jurisdictions where enforcement may be necessary.
- Discuss the risks and benefits of registration with survivors so they can decide whether it is safe and would be helpful.
- Help survivors obtain several certified copies of the protection order, as many jurisdictions require certified copies for registration or filing.
- Assist survivors in providing copies of the protection order to law enforcement in communities in which they may require enforcement.
- If survivors have children, assist survivors in delivering the order to the school. Help survivors explain the protection order provisions to the appropriate school personnel (administrators, resource officers,

and teachers). The survivor may want to provide the school with information about the risks the offender may pose for abduction or violence at the school. Furthermore, the survivor may advise school personnel if the order precludes the abuser access to school records, or addresses of the children and the survivor.

- Although contrary to the language and intent of VAWA, some jurisdictions require registration of protection orders as a prerequisite to enforcement. Advocates should explain the law and the critical importance of enforcing valid protection orders.

## **Enforcement of Protection Orders**

- Make sure the survivor has several copies of the order.
- Help the survivor obtain timely service of the order and proof of service.
- Provide the survivor copies of the full faith and credit provision and definitions, 18 U.S.C. §§ 2265, 2266, to carry with the order at all times.
- Provide the survivor with copies of *Increasing Your Safety: Full Faith and Credit for Protection Orders*, free from the National Center on Protection Orders and Full Faith & Credit ([www.fullfaithandcredit.org](http://www.fullfaithandcredit.org)).
- Remind the survivor to keep a copy of the order, the federal statute, and any other relevant statutes, or information in a safe, confidential location.
- Encourage the survivor to notify enforcing courts of any changes to the terms of the order by submitting a certified copy of any modified order.
- Be familiar with the laws and procedures of the jurisdictions, including any tribal lands and territories, where the survivor may need the order enforced. Advocates may obtain this information by contacting each state's or tribe's domestic violence coalition, or the organizations listed in the resource section of this guide.
- Provide the survivors with the names, addresses, and phone numbers of court clerks; local prosecutors; law enforcement; state, and tribal domestic violence coalitions; legal services organizations; and local domestic violence programs in each jurisdiction in which enforcement may be required.
- Work with judges, court clerks, prosecutors, and law enforcement to develop a coordinated, community-wide response for enforcing protection orders.
- Explain the enforcing jurisdiction's laws and procedures to the survivor.
- Provide survivors information regarding registration, including safety concerns, and the pros and cons of registration, so they can make an informed decision about whether to register their order in non-issuing jurisdictions.
- Remind police officers that they must enforce the protection order as written, regardless of whether it is registered or filed in the enforcing

jurisdiction or listed in a state, tribal, or territorial centralized protection order database or in NCIC POF.

- Encourage state, tribal, and federal prosecutors to work together to ensure the most successful prosecution of interjurisdictional cases.
- Develop relationships with federal victim-witness specialists in order to work together to enhance survivor safety and the prosecution of federal crimes of domestic violence and stalking.

### **Enforcement of Protection Orders in Indian Country**

- Explain the concept of comity to survivors and help them research the enforcement procedures of any tribal jurisdiction to which they may travel.
- Inform survivors that, to facilitate enforcement, they may want to take the protection order issued by another tribe, territory, or state to the tribal court to ask that it be recognized or domesticated.
- Advise survivors about the authority of the tribal court to enforce their protection order.

In Public Law 280 states, inform survivors of the authority of the tribal court, the state courts, and the federal courts to enforce their order and to prosecute the respondent or accused. In non-Public Law 280 states, apprise survivors of the authority of tribal law enforcement, prosecutors, and courts related to civil contempt and criminal prosecution.

## **SUMMARY OF FEDERAL DOMESTIC VIOLENCE LAWS**

Advocates must be familiar with the federal laws that pertain to domestic violence, stalking, and firearm prohibitions in order to inform survivors of federal criminal prosecution options. If the survivor wishes to consider federal prosecution of the offender, the advocate should collaborate with the local prosecutor to present the U.S. Attorney with evidence of the federal crime(s) committed by the offender, with an assessment of the offender's potential for severe violence and the heightened necessity for pretrial protections for both the survivor and any children.

For the following federal crimes, the law defines "state" to include a state of the United States, the District of Columbia, or a commonwealth, territory, or possession of the United States. 18 U.S.C. § 2266(8).

### **Interstate Domestic Violence**

Under 18 U.S.C. § 2261, it is a federal crime for a person to travel in interstate or foreign commerce, to enter or leave Indian Country, or to travel within the special maritime and territorial jurisdiction of the United States with the intent to kill, injure, harass, or intimidate a spouse, intimate

partner, or dating partner, and in the course of or as a result of such travel, commit or attempt to commit a crime of violence against that partner.

It is also a federal crime for a person to cause a spouse, intimate partner, or dating partner to travel in interstate or foreign commerce, or to enter or leave Indian Country, by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that partner.

The broad definition of “spouse or intimate partner” includes:

“(I) a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or (II) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship.” 18 U.S.C. § 2266(7)(A)(i).

The term “spouse or intimate partner” also covers “any other person similarly situated to a spouse who is protected by the domestic violence or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.” 18 U.S.C. § 2266(7)(B).

The term “dating partner” refers to any “person who is or has been in a social relationship of a romantic or intimate nature with the abuser. The existence of such a relationship is based on a consideration of— (A) the length of the relationship; and (B) type of relationship; and (C) the frequency of interaction between the persons involved in the relationship.” 18 U.S.C. § 2266(10).

## **Interstate Stalking**

Under 18 U.S.C. § 2261A(1), it is a federal crime for an individual to travel in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or to enter or leave Indian Country, with the intent to kill, injure, harass, or place another person under surveillance with intent to kill, injure, harass, or intimidate that person, and in the course of, or as a result of, such travel the individual traveling places another in reasonable fear of death or serious bodily injury, or causes substantial emotional distress to the other person, a member of the immediate family of that person, or the spouse or intimate partner of that person.



It is also a federal crime to use the mail, any facility of interstate or foreign commerce, or any interactive computer service to engage in a course of conduct that causes substantial emotional distress or places a person in reasonable fear of death or serious bodily injury. The abuser must intend to kill, injure, harass, or place under surveillance with the intent to kill, injure, harass, or intimidate or cause substantial emotional distress to that person, a member of their immediate family, or their spouse or intimate partner, in another jurisdiction. 18 U.S.C. § 2261A(2).

With regard to stalking, the terms “spouse or intimate partner” are broad and include “(I) a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; or (II) a person who is or has been in a social relationship of a romantic or intimate nature with the target of the stalking, as determined by the length of the relationship, type of relationship, and the frequency of interaction between the persons involved in the relationship.” 18 U.S.C. § 2266(7)(A)(ii). The definition also includes “any other person similarly situated to a spouse who is protected by the domestic violence or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.” 18 U.S.C. § 2266(7)(B).

The term “immediate family member” includes a spouse, parent, brother or sister, child or person to whom the stalking target stands in *loco parentis* with; or any other person living in the household and related to the stalking target by blood or marriage. 18 U.S.C. § 115(c)(2).





### **Interstate Violation of Protection Order**

It is a federal crime to travel in interstate or foreign commerce, or enter or leave Indian Country, or to travel within the special maritime and territorial jurisdiction of the United States, with intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the issuing jurisdiction. The person must intend to violate the order at the time of travel and must subsequently engage in a violation of such portion of the order. 18 U.S.C. § 2262.

It is also a federal crime to cause another person to travel in interstate or foreign commerce, or enter or leave Indian Country, by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel the offender engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the issuing jurisdiction.

Note: There is no intimate partner requirement in § 2262. For purposes of this section, the pertinent definition for “protection order” is under 18 U.S.C. § 2266(5).

## **Firearm Prohibition for Misdemeanor Crimes of Domestic Violence**

In addition to the firearm prohibition for persons subject to a qualifying protection order explained earlier (18 U.S.C. § 922(g)(8)), it is against federal law for anyone convicted of a qualifying misdemeanor crime of domestic violence to possess, receive, or ship firearms or ammunition. 18 U.S.C. § 922 (g)(9). This federal statute applies to convictions that occurred before and after the law went into effect September 30, 1996.

The law applies to federal, state, municipal, and tribal misdemeanors that meet certain conditions. There is a relationship requirement for the misdemeanor to be a crime of domestic violence. The defendant must have been a current or former spouse of the victim; a parent or guardian of the victim; have a child in common with the victim; cohabit or have cohabited with the victim as a spouse, parent, or guardian; or be a person similarly situated to a spouse, parent, or guardian of the victim.

The misdemeanor also must be one where an element (i.e., section or prong) of the crime is the use or attempted use of physical force, or threatened use of a deadly weapon. 18 U.S.C. § 921(33)(A)(ii). Further, the records of a convicting court must specify that the particular offense for which the defendant was convicted included an element of use or attempted use of physical force or threatened use of a deadly weapon.

VAWA requires courts to give notice of federal and state firearm prohibitions to all domestic violence offenders, including those convicted of misdemeanor crimes of domestic violence. An example that would meet the requirement is:

You have been convicted of a misdemeanor crime involving violence where you are or were a spouse, intimate partner, parent or guardian of the victim or are or were involved in another, similar relationship with the victim. Be advised that it may be unlawful for you to possess or purchase a firearm, including a rifle, pistol, or revolver, or ammunition, pursuant to federal law under 18 U.S.C. § 922(g)(9) [and/or state law]. If you have any questions whether state or federal laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.



Unlike § 922(g)(8), this gun prohibition is long lasting, meaning that a person who has been convicted of a qualifying misdemeanor can never legally possess a gun again unless the conviction has been expunged, or set aside, or the person is pardoned, or has his or her civil rights restored (i.e., right to sit on a jury, vote, hold a public office). This clause does not refer to firearms rights. Further, one cannot have civil rights restored if the convicting jurisdiction did not take any civil rights away. However, if the defendant's firearms rights remain restricted by the convicting jurisdiction by statute or by post conviction relief the defendant is still considered convicted for the Gun Control Act purposes. Examples include: if the defendant was unable to obtain a concealed weapons permit, unable to obtain a handgun, unable to possess a handgun in home, able to hunt but may not possess firearms for other purposes. Unlike § 922(g)(8), there is no official use exemption under § 922(g)(9). Government employees are subject to this law, even while on duty.

### **Advocating for Immigrant or Trafficked Survivors**

Immigrant survivors should always consult with an immigration attorney, especially before initiating a self-petition or applying for a T-visa or U-visa. Advocates should refer immigrant survivors of domestic violence, sexual assault, stalking, trafficking, or dating violence to an attorney with expertise in both immigration and violence against women issues as a matter of routine practice. If it is not possible to locate an attorney with expertise in both areas, advocates should refer survivors to an immigration specialist.

## Tips Regarding Firearms

Urge courts to adopt a standardized first page for protection orders that contains a clear warning to the defendant that possessing firearms or ammunition while subject to a protection order may violate state or federal law. This warning alone may, in some cases, cause the abuser to dispose of firearms.

- Encourage survivors to inform the court, prosecutors, and law enforcement officers if they know, or have reason to believe, that an abuser possesses any firearms, both before and after issuance of the protection or sentencing order.
- Should survivors have knowledge that the firearms of domestic violence offenders have not been surrendered or transferred pursuant to protection orders or sentencing documents, be prepared to assist survivors in seeking enforcement of firearm prohibitions.
- Inform survivors about different options, including contacting an Assistant United States Attorney or victim/witness specialist in the Office of the U.S. Attorney or the Bureau of Alcohol, Tobacco, Firearms and Explosives in the federal district in which they reside or where the violation of federal firearm laws occurred.
- Encourage state, tribal, or territorial courts to notify survivors of any expungement or pardon, and of their right to appear and offer testimony in support of or in opposition to the offenders' applications.

Advocates should advise survivors and the general public about the elevated risks posed by firearms to the health and survival of battered women, their children, and interveners. It may be helpful for advocates to learn about policies and protocols in the issuing and potential enforcing jurisdictions. Helpful topics include search and seizure or removal, transfer, retention, return, and destruction of firearms owned or possessed by survivors or batterers. It is also important to assess whether the legal system vigorously and consistently implements the firearm prohibitions contained in federal, state, tribal, and territorial statutes and in protection orders. If either the issuing or enforcing jurisdiction is lax in implementing firearm laws, advocates and survivors may decide to organize the public in support of efforts to get firearms out of the hands of perpetrators of violence against women and children. Likewise, advocates and survivors may elect to request specific provisions in protection orders that instruct law enforcement and judicial officers about enhanced interventions to divest batterers of their firearms.

## GLOSSARY OF TERMS

**Certified Copy** – a duplicate of an original, usually official, document with an indication that it is an exact reproduction by the court or agency responsible for issuing or keeping the original; the indication may be an official stamp, seal, or signature of the issuing judge or clerk of court.

**Comity** – a legal principle describing courtesy and respect among political entities (e.g., sovereign nations) involving especially mutual recognition of legislative, executive, or judicial acts; as where a tribal court recognizes a protection order issued by a state court or another tribal court.

**Consent Order** – a protection order issued, often without a “finding” (i.e., legal conclusion) of abuse, with both parties’ consent to entry of the order; an agreement of the parties with the court’s approval; a stipulated order of the court.

**Course of Conduct** – a pattern of two or more acts evidencing a continuity of purpose.

**Divorce and Support Protection Orders** – *pendente lite* orders (i.e., orders that are operative during the family law proceedings), divorce and support decrees, or settlement agreements containing protection provisions entered by family courts. These protection provisions are afforded full faith and credit.

**Ex Parte Protection Order** – an order issued where only one party is present; an emergency or temporary order issued at the petitioner’s request without first providing notice or a hearing to the respondent. There are other types of *ex parte* orders, but this brochure uses the term exclusively to refer to protection orders issued *ex parte*.

**Indian Child Welfare Act (ICWA)** – a federal law that applies to custody proceedings in state courts involving foster care placement, termination of parental rights, preadoptive placement, and adoptive placement of Indian children; applies to divorce or custody proceedings where the court considers granting custody of a child to a third party rather than a biological parent. 25 U.S.C. § 1901 (1978). Abusers often threaten to use it against survivors, but it does not apply to custody proceedings between the child’s parents.

**Indian Country** – 18 U.S.C. § 1151 defines “Indian Country” as “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States

Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.” 18 U.S.C. § 2266(4) reads, “The term ‘Indian Country’ has the meaning stated in § 1151 of this title.”

**Jurisdiction** – a government’s general power to exercise authority over all persons and things within its territory, including a court’s power to hear and decide a case; also the geographic area in which a court and law enforcement may exercise authority. In this guide, jurisdiction mainly refers to the geographic areas subject to the federal law, state law, Indian tribal law, the laws of the District of Columbia, or the U.S. territories (the Commonwealth of Puerto Rico, the U.S. Virgin Islands, American Samoa, the Northern Mariana Islands, or Guam).

**Enforcing Jurisdiction** – the jurisdiction or geographic area in which the court, law enforcement officers, and prosecutors enforce the foreign protection order.

**Issuing Jurisdiction** – the jurisdiction or geographic area in which the court that granted the protection order is located.

**Personal Jurisdiction** – refers to a court’s authority to hear and decide a case involving particular individuals or parties.

**Subject Matter Jurisdiction** – refers to a court’s authority to hear and decide a particular type of case, such as one involving protection orders.

**Misdemeanor Crime of Domestic Violence (MCDV)** – for purposes of 18 U.S.C. §§ 922(g)(9) and 922(d)(9), the law defines a “qualifying” misdemeanor crime of domestic violence as a misdemeanor under federal, state, or tribal law that has as an element the use or attempted use of physical force, or the threatened use of a deadly weapon. The defendant must also have been a current or former spouse, parent, or guardian of the victim; a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, or guardian; or a person who was or is similarly situated to a spouse, parent, or guardian of the victim.

**Mutual Order** – a single protection order that includes prohibitions or relief against both the petitioner and respondent, such as mutual no contact provisions.

**Parental Kidnapping Prevention Act (PKPA)** – a federal law enacted to ensure that different jurisdictions honor and enforce one another’s custody orders provided that both parties have prior notice and an opportunity to be heard. 28 U.S.C. § 1738A (Full Faith And Credit Given To Child Custody Determinations). “Home state” jurisdiction (typically the jurisdiction where the child lived for a six-month period prior to the filing of the action) has priority over all other jurisdictions, and other courts must defer to that state. There is an important emergency jurisdiction exception to home state priority where the child is present in another state and “it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.” 28 U.S.C. § 1738A(c)(2)(C)(ii).

**Petitioner** – the person who requests a protection order from the court.

**Protection Order** – for purposes of 18 U.S.C. § 2265 (full faith and credit), a broad definition of protection order applies. See the federal definition on page 3.

**Qualifying Protection Order** – for the purpose of federal prohibitions on firearm possession, a protection order that meets the following conditions: (i) the protected party must be a spouse, former spouse, present or former cohabitant with the respondent, parent of common child, or a child of the respondent; (ii) the order must have been entered after a hearing of which the respondent had notice and an opportunity to appear; (iii) the order must restrain the respondent from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place the protected party in reasonable fear of bodily injury to the partner or child; and (iv) the order must include a finding that the respondent represents a credible threat to the protected party or must include an express prohibition against harassment, stalking, or the use of force that would reasonably be expected to cause injury. 18 U.S.C. § 922(g)(8).

**Recognition** – a nation, state, or tribe’s act of formally acknowledging the existence and enforceability of another jurisdiction’s order; as where a tribe issues its own order granting recognition of a state-issued protection order.

**Registration or Filing** – refers to a procedure where a protection order from one jurisdiction may be registered or filed into records or a database with a clerk of court or law enforcement agency in another jurisdiction. In some jurisdictions, the order may be entered into a local or statewide protection order electronic registry. Registration may create a searchable public record of the protection order in the enforcing jurisdiction.



**Respondent** – the person against whom the court issues a protection order.

**Tribe** – an Indian nation, Indian tribe, or native sovereign nation.

### **Assistance for Survivors of Domestic Violence**

#### **National Domestic Violence Hotline**

800-799-SAFE/7233

TTY 800-787-3224

(24 hours for referral to state, tribal, territorial and local organizations)

[www.ndvh.org](http://www.ndvh.org)

#### **National Teen Dating Abuse Helpline**

Love is Respect

866-331-9474

TTY 866-331-8453

[www.loveisrespect.com](http://www.loveisrespect.com)

#### **Hotline Assistance for Victims of Sexual Assault**

To be connected to a local rape crisis center:

800-656-4673

[www.rainn.org](http://www.rainn.org)



## RESOURCES

### **Expertise on Protection Orders, Full Faith and Credit, and Firearm Prohibitions**

National Center on Protection Orders and Full Faith & Credit (NCPOFFC)  
800-903-0111, prompt 2  
703-312-7922  
ncffc@bwjp.org  
www.fullfaithandcredit.org

Brochures available related to full faith and credit:

- *Protecting Victims of Domestic Violence: A Law Enforcement Officer's Guide to Enforcing Protection Orders Nationwide*
- *A Prosecutor's Guide to Full Faith and Credit for Protection Orders: Protecting Victims of Domestic Violence*
- *Increasing Your Safety: Full Faith and Credit for Protection Orders*, a guide for survivors

National Council of Juvenile and Family Court Judges  
Family Violence Department  
800-52-PEACE or 800-527-3223  
202-558-0031  
www.ncjfcj.org

Available from NCJFCJ: *A Guide for Effective Issuance & Enforcement of Protection Orders*, *Passport to Safety: Full Faith and Credit a Judge's Bench Card*.

### **Expertise on Tribal Issues**

Mending the Sacred Hoop  
888-305-1650 or (218) 623-4667  
www.msh-ta.org

Sacred Circle  
877-733-7623  
www.sacred-circle.com

Southwest Center for Law and Policy  
520-623-8192  
www.swclap.org

Tribal Law and Policy Institute  
651-644-1125  
[www.tribalprotectionorder.org](http://www.tribalprotectionorder.org)

### **Expertise on Project Passport**

National Center for State Courts  
Contact Person: Denise Dancy  
800-616-6164  
757-259-1593  
[www.ncsc.org](http://www.ncsc.org)

### **Expertise on Interstate Custody Issues**

Legal Resource Center on Violence Against Women  
800-556-4053  
301-270-1550  
[www.lrcvaw.org](http://www.lrcvaw.org)

### **Expertise on Stalking**

National Center for Victims of Crime  
Stalking Resource Center  
800-FYI-CALL or  
202-467-8700  
[www.ncvc.org/src](http://www.ncvc.org/src)

### **Expertise on Immigration and Trafficking Issues**

Legal Momentum  
202-326-0040  
[www.legalmomentum.org](http://www.legalmomentum.org)

ASISTA Immigration Technical Assistance  
515-244-2469  
[www.asistahelp.org](http://www.asistahelp.org)

### **Expertise on Animal Abuse/Pet Safety**

American Humane Association  
Pets and Women's Shelters (PAWS) Program  
703-836-7387/PETS  
[www.americanhumane.org](http://www.americanhumane.org)  
[PAWSprogram@americanhumane.org](mailto:PAWSprogram@americanhumane.org)



**National Center on Protection Orders and Full Faith & Credit**

**1901 N. Fort Myer Drive, Suite 1011**

**Arlington, VA 22209**

**Toll Free: 800-903-0111, Prompt 2**

**Direct: 703-312-7922**

**Fax: 703-312-7966**

**Website: [www.fullfaithandcredit.org](http://www.fullfaithandcredit.org)**

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