
An Advocate's Guide to Full Faith and Credit for Orders of Protection Assisting Victims of Domestic Violence

Full Faith and Credit Project, Pennsylvania Coalition Against Domestic Violence

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What is Full Faith and Credit?

Simply stated, full faith and credit means that:

A valid order of protection is enforceable where it is issued and in all other jurisdictions. This includes all 50 states, Indian tribal lands, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, American Samoa, the Northern Mariana Islands and Guam.

Under the federal Violence Against Women Act (VAWA), jurisdictions must give full faith and credit to valid orders of protection issued by other jurisdictions. Full faith and credit is a legal term that means jurisdictions must honor and enforce orders issued by courts in other jurisdictions.

"Any protection order issued that is consistent with subsection (b) of this section by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the court of another State or Indian tribe (the enforcing State or Indian tribe) and enforced as if it were the order of the enforcing State or tribe." 18 U.S.C. sect 2265. What does this mean for survivors of abuse?

For the order of protection to be valid, it must meet the following conditions:

- The court that issued the order must have had personal jurisdiction over the parties and subject matter jurisdiction over the case
- The respondent must have had notice and an opportunity to be heard.* 18 U.S.C. sect 2265(b).

Full faith and credit helps to protect freedom of movement by requiring the justice system to enforce orders of protection throughout the country. If an abuser travels across state or tribal lines and violates a protection order, the abuser can be punished under the laws of the jurisdiction where the violation occurred and also may be charged with federal crimes.

What does this mean for survivors of abuse?

The full faith and credit provision of VAWA can enable survivors of abuse to call on law enforcement officers and the courts to enforce their orders of protection across state or tribal lines. When survivors cross jurisdictional lines to work, travel, or relocate, they often find themselves in on-going danger, since frequently they are pursued or stalked by their abusers. For this reason, VAWA establishes nationwide enforcement of orders of protection.

What does this mean for abusers?

The full faith and credit provision of VAWA requires police and courts in the enforcing jurisdiction to treat the order as if it were issued in their own state or tribe. This means that if the abuser violates the order, he/she can be arrested and prosecuted if the laws of the enforcing jurisdiction allow this type of enforcement for violations of protection orders.

Tribes do not have criminal jurisdiction over non-Indians. Tribal police do have authority to stop, detain and transport non-Indian offenders to state or federal authorities who have criminal jurisdiction over non-Indian crimes. In addition, some tribes use their civil laws to impose civil fines or orders of exclusion to escort non- Indian abusers off tribal lands.

What does this mean for advocates?

Full faith and credit may be a passport to safety for many survivors of domestic violence so advocates need to be familiar with the federal law and understand how it is being implemented in states and tribes throughout the country. Advocates need to share this information with all survivors. Advocates also need to advise survivors of the dangers they may face when traveling and assist them with appropriate safety planning. Abusers who are determined and willing to cross state or tribal lines in pursuit of their victims may be among the most dangerous. With information about full faith and credit, survivors can make more informed decisions about safety.

Advocate Tips

- Assess the need for enforcement of orders of protection in other jurisdictions including travel for purposes of work, shopping, vacation, and relocation

- Be familiar with the sources of technical assistance on full faith and credit (many are listed in the last page of this document)
- Assist survivors in obtaining clear, enforceable orders from the courts in your jurisdiction
- Know the laws and policies (e.g. registration and filing procedures) for enforcing foreign protection orders in your jurisdiction
- Know how to get this same information about other jurisdictions

An important role of the advocate is to help the abused person assess the dangerousness of the situation and develop a safety plan. Most survivors will travel across jurisdictions, so full faith and credit issues need to be addressed in all safety plans.

Assessing Danger

Factors to consider in determining serious danger/lethality:

- Separation of the parties
- Threats of homicide/suicide
- Possession or access to weapons
- Stalking
- Obsessive or desperate attachment to victim
- Destruction of victim's property
- History of domestic violence and violent criminal conduct
- Drug or alcohol involvement
- Depression or other mental illness
- Abuse of animals

Safety Planning

Advocates should assist survivors in developing a safety plan. Safety plans should be detailed, specific, and practical. Issues to address include:

- Custody and visitation and legal assistance in these matters
- Plans to leave the jurisdiction
- Travel safety

- Getting a protection order that will be enforceable across jurisdictions
- Phone numbers for domestic violence programs, law enforcement, court clerks, and technical assistance

Which Orders of Protection are Enforceable?

Under VAWA, a protection order is defined as: "any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to, another person, including temporary and final orders issued by civil and criminal courts (other than support or child custody orders) . . ." 18 U.S.C. sect 2266.

The full faith and credit provision applies to both civil and criminal orders of protection, whether issued ex parte, after a hearing, or by agreement. Orders may differ from jurisdiction to jurisdiction in form, content, length, layout, or name (e.g., protection from abuse order, no contact order, stay away order, harassment order, restraining order, permanent order, conditions of release order).

Civil Orders of Protection

Consent Orders. If a valid order of protection is issued on behalf of only one party, the federal law does NOT require that the order include a specific finding of abuse to be enforceable across jurisdictional lines. This means that if the victim files a petition for an order of protection and the abuser consents or agrees to the entry of the order, even without admitting to the abuse, the order will still be entitled to full faith and credit.

Mutual Orders. Sometimes an order of protection will contain a mutual "no contact" provision or it will direct both parties not to abuse each other. The full faith and credit section of VAWA requires special safeguards for enforcement of this type of order across jurisdictional lines. It states that an order should be enforced against the respondent and not the petitioner, unless the respondent cross filed a written pleading for an order of protection and the issuing court made a specific finding that each party had abused the other. If such findings were made, the order may be enforced against both parties. 18 U.S.C. sect 2265(c).

Advocate Tips

- If you are working with a victim whose abuser filed a petition first, assist the victim, if appropriate, in filing a cross petition so the court can make a finding that the victim is entitled to relief and issue an order that can be enforced across jurisdictional lines
- Another option would be to file a separate petition so the victim can get a separate order that would be eligible for full faith and credit

Custody Provisions. Orders of protection often include terms that award custody of the minor children to the victim. However, the definition of "protection order" in sect 2266 of VAWA contains language that specifically excludes custody and support orders from court orders that are entitled to interstate enforcement under full faith and credit. It is unclear whether Congress intended to ex-

clude the custody provisions in orders of protection or only custody orders that are part of separate divorce or custody decrees. Until this issue is clarified, advocates should look to other state, tribal, and federal laws that govern custody and visitation orders to try to determine if a custody order can be enforced in other jurisdictions. Some of the federal laws to check include the Uniform Child Custody Jurisdiction Act (UCCJA), the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), the Parental Kidnapping Prevention Act (PKPA), and the Indian Child Welfare Act (ICWA). If a custody provision in an order of protection meets the jurisdictional requirements of either the UCCJA or UCCJEA of the issuing jurisdiction and the PKPA, it is entitled to interstate enforcement. These laws can be quite complex, so advocates should encourage survivors to seek legal assistance.

For more information concerning custody provisions in orders of protection, contact the Family Violence Department of the National Council of Juvenile and Family Court Judges at (800) 527-3223 or the Commission on Domestic Violence of the American Bar Association at (202) 662-1737.

You can assist abused persons in their efforts to protect their children in the following ways:

- Assist the survivor in getting legal representation Many legal services programs provide direct representation and legal assistance. The Battered Women's Justice Project (Civil) at (800) 903-0111 ext. 2 offers information on how to obtain legal representation.
- If the order meets the requirements of the UCCJEA or UCCJA and PKPA, request that the court include a statement to that effect in the order of protection
- Assist the survivor in getting a trusted friend, battered women's program representative, or attorney to accept service if the abuser makes an effort to change the order of protection or seeks a separate custody order after the survivor leaves the jurisdiction
- Remind judges and policy makers of the importance of protecting the children of abused persons and the fact that abusers often use children to control their partners

Criminal Orders of Protection. The full faith and credit provision of VAWA applies to valid criminal orders of protection. These orders may be part of pre-trial release orders, conditional release orders or probation orders. They also may be separate, independent orders. Enforcement across state or tribal lines may be problematic, because the way to enforce such orders usually requires a hearing before the court that issued the order. Jurisdictions vary in the type of authority given to police officers to make arrests without a warrant for violations of criminal orders. Few states and tribes have separate provisions in their criminal laws for violation of such orders. If a criminal order is violated across state or tribal lines, the enforcing jurisdiction can probably only hold the perpetrator for extradition, which is a formal legal process to send the offender back to the home (issuing) jurisdiction. Extradition is unlikely to occur when the underlying charge is a misdemeanor crime. Jurisdictions also vary considerably in providing notice to the victim about the existence of criminal orders of protection. Additionally, many criminal orders of protection are not entered into the jurisdiction's protective order registry, so police officers may not be able to obtain confirmation of the order.

For more information concerning enforcement of criminal orders of protection, contact the Battered Women's Justice Project (Criminal) at (800) 903-0111 ext. 1.

Military Orders of Protection. The federal law does not explicitly cover orders of protection issued on military bases or installations. In fact, most military orders will not meet the requirements for validity under VAWA since they are usually issued by a commanding officer without providing the respondent with an opportunity to be heard. This means that military orders of protection are generally not entitled to full faith and credit. The question that remains is whether military bases are required to enforce orders of protection issued by state or tribal courts. Commanding officers on some bases are directing military police (MPs) to enforce civilian (state or tribal) orders of protection issued against service members. Such enforcement usually consists of informing the local civilian courts or law enforcement agency of the violation and assisting the civilian authorities in investigating and prosecuting the violation in civilian court.

For more information on policies and enforcement of orders of protection on military bases, contact the Battered Women's Justice Project (Criminal) at (800) 903-0111 ext. 1.

Which Laws Apply?

The jurisdiction that issues the order determines:

- Who is protected
- The terms and conditions of the order
- How long the order is in effect

Examples:

A survivor obtains an order of protection against her same-sex abuser in State A. She then flees to State B, where same-sex partners are not eligible for orders of protection.

Q: Is her order entitled to full faith and credit in State B?

A: Yes. Since State A (the issuing jurisdiction) determined she was eligible for an order, State B (the enforcing jurisdiction) must enforce the out-of-state order.

A survivor of domestic violence is granted a lifetime order of protection by an Indian tribe. Four years later, she relocates to a state where the maximum duration of an order is three years.

Q: Is her order of protection enforceable in the state?

A: Yes. Since the Indian tribe (issuing jurisdiction) determined she was entitled to a lifetime order, the state (enforcing jurisdiction) must enforce the order for the lifetime of the victim.

The jurisdiction that enforces the order determines:

- How the order is enforced
- The arrest authority of responding law enforcement
- Detention and notification procedures
- Penalties or sanctions for violations of the order

Example:

A survivor of abuse obtains an order of protection in State A where a violation of an order is a misdemeanor crime. After obtaining the order, the survivor visits a family member in State B, where violation of an order is prosecuted as criminal contempt.

Q: If the order of protection is violated in State B, will the abuser be charged with a misdemeanor crime or with criminal contempt?

A: Since State B (the enforcing jurisdiction) determines the sanctions for violations of the order, the abuser will be charged with criminal contempt.

How is the Federal Law Being Implemented?

At present, there is considerable variation among jurisdictions regarding implementation procedures. Some have enacted full faith and credit laws to implement VAWA while others have developed enforcement protocols. Advocates need to be familiar with full faith and credit legislation and procedures in their own jurisdictions as well as those of neighboring jurisdictions so they can provide accurate information to survivors.

Registration/Filing

The federal law does NOT require registration or filing of orders of protection, however, a handful of jurisdictions require registration for purposes of enforcement.

Benefits. Registration/filing may be necessary to ensure full faith and credit if it is required by state or tribal law. Registration may also help to facilitate proper enforcement by courts and law enforcement agencies. These procedures, however, are relatively new in many jurisdictions so clerks of court and law enforcement personnel may be unfamiliar with how to register or file an order. Advocates should be prepared to assist survivors, if appropriate, in complying with registration or filing procedures.

Risks. Registration is not without risks. Filing can be dangerous in certain situations, especially if the abused person is registering the order in a jurisdiction where notice is sent to the abuser or where an order of protection is deemed a public record. It would be time-consuming and difficult, but a diligent abuser could locate the victim by searching court records throughout the jurisdiction. Advocates need to advise survivors who want to keep their whereabouts confidential that registration may be risky.

Registration/filing may not always be practical or even possible. In an emergency, there may not be an opportunity to register or file the order before seeking enforcement.

Recognition

The federal law does not require recognition of orders of protection, however, a number of Indian tribes recognize orders from other jurisdictions under the legal principle of comity.

For more information concerning Indian tribes, contact Sacred Circle at (877) 733-7623 or the American Indian Law Center at (505) 277-5462.

Certification

A certified copy of an order of protection 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 mandate that an order of protection be "certified" to be entitled to enforcement across state, territorial, or tribal lines. Nonetheless, many jurisdictions require that a copy of a foreign order be certified for purposes of registration or filing. Therefore, advocates may want to suggest that survivors get certified copies of their orders of protection to ensure proper enforcement.

For more information related to state and tribal full faith and credit enabling laws or other enforcement procedures, contact the Full Faith and Credit Project at (800) 256-5883.

Advocate Tips

- Help the survivor to find out whether there are any registration requirements in the jurisdictions where enforcement will be needed
- Get several certified copies of the order of protection, as some jurisdictions may require a certified copy for purposes of filing or registration
- If the survivor does not have a certified copy of the order of protection but wants to register the order in the enforcing jurisdiction, assist in getting a certified copy of the order from the issuing jurisdiction
- If law enforcement cannot arrest for violations of an order before it has been registered or filed in the enforcing jurisdiction, encourage them to arrest for other state or tribal crimes that may have been committed (e.g. trespass, burglary, stalking)
- Keep court officials and local law enforcement informed about the potential risks of registration so that they are encouraged to enforce orders when survivors choose not to register their orders in jurisdictions where registration is optional
- If the laws of a state or tribe require registration or filing for purposes of enforcement, encourage lawmakers to amend their statutes because of safety concerns

How Are Orders Enforced?

Law Enforcement

Law enforcement officers are required to enforce orders of protection from other jurisdictions in the same manner they enforce orders issued within their own jurisdictions.

Before arresting for violation of an order of protection issued in another jurisdiction, officers should verify that a valid order exists (see below), determine whether the order was violated, and enforce the terms of the order pursuant to the laws of the enforcing jurisdiction (e.g. arrest if probable cause exists and if the alleged violation is an arrestable offense).

*For more information concerning law enforcement responsibilities, refer to the International Association of Chiefs of Police (IACP)/Department of Justice (DOJ) publication entitled *A Law Enforcement Officer's Guide to Enforcing Orders of Protection Nationwide*. Copies of the IACP/DOJ booklet can be obtained by contacting (800) THE-IACP.*

Tribal police (unless they have been cross-deputized or crosscommissioned) do not have authority to arrest non-Indians. Many tribes call in the city, county, or state law enforcement officers to make those types of arrests.

As federal officers, Bureau of Indian Affairs (BIA) officers DO have criminal jurisdiction over non-Indians who commit offenses against Indians, and they exercise that jurisdiction in coordination with the FBI and U.S. Attorneys' offices. The BIA sometimes deputizes qualified tribal police officers who assist in exercising this jurisdiction.

State, Tribal and Local Electronic Protection Order Registries. Many states, tribes, and localities have developed computerized databases that contain records of valid orders of protection issued or registered within the jurisdiction. Some jurisdictions also keep records of expired orders. If a state or tribal registry is accurate and up-to-date, it can be accessed to verify the existence of a protection order in cases where the victim cannot produce a paper copy or where the paper copy does not appear to be valid. It should be noted that not all states and tribes have centralized databases of protection orders so officers should be prepared to take other steps to check the validity of an order.

The NCIC Protection Order File. In 1997, the FBI established the National Crime Information Center's (NCIC) Protection Order File. Because state and tribal participation is voluntary and NCIC requires certain data elements to list an order, the national registry does not contain orders from all jurisdictions. As such, the NCIC Protection Order File is an imperfect verification tool. Law enforcement officers who access the national registry to confirm the status of an order need to be aware of its limitations. In particular, advocates should remind officers that:

- Many states and tribes are not yet participating in the FBI registry
- Even if a state or tribe enters orders into the NCIC system, checking the NCIC file or verifying with the state registry may not result in a positive verification for reasons including the following:

- the data fields in some state or tribal registries may be incomplete or incompatible with the NCIC file
- registries may not always capture 100% of enforceable orders
- there may be a time delay between the issuance of the order and entry into the state or tribal registry or the NCIC file

For more information concerning the NCIC Protection Order File or state and tribal registries, contact the Full Faith and Credit Project at (800) 256-5883.

Verification of an Order by a Law Enforcement Officer

If the survivor has a paper copy of the order, the officer should enforce the order if it:

- Contains the names of both parties
- Includes the date it was issued
- Appears to be in effect (i.e., has not expired)
- Specifies terms and conditions with which the abuser must comply
- Contains the name of the issuing court
- Includes a signature of or on behalf of a judicial officer

If the survivor does not have a paper copy of the order, the officer can:

- Check to see whether the order has been entered into the issuing or enforcing jurisdiction's protection order registry or the NCIC Protection Order File
- Contact the issuing court for verification of the order's validity
- Arrest for all violations of the order and any other crimes that may have been committed
- Alert the prosecutor's office of all crimes committed under the enforcing jurisdiction's criminal code and potential federal domestic violence crimes
- Enforce the protection order based on a good faith belief that the order is valid

Verifying the terms and conditions of an order of protection

Although verification is not required under the federal law, it may be required by the enforcing jurisdiction under certain circumstances (e.g., the victim does not have a copy of the order).

Courts

Courts are required to give full faith and credit to orders of protection from other jurisdictions. This means that the order must be enforced as issued, but that the court should apply the laws of the enforcing jurisdiction if the order is violated. To facilitate implementation of full faith and credit:

- Clerks of court should be familiar with the mandates of the federal law and be prepared to file or register an order upon presentation by a survivor
- Judges should
 - be familiar with full faith and credit when issuing and enforcing orders of protection
 - issue orders that are explicit, clear, comprehensive, and legible
 - include language in orders confirming that the requirements for "validity" under VAWA have been met
 - include notations in orders that the custody provisions meet the requirements of the UCCJA or UCCJEA and PKPA
 - inform both parties orally and in writing that the order is enforceable in all jurisdictions, violations of the order may result in state, tribal, or federal sanctions wherever the violations occur, and enforcement procedures may vary significantly from jurisdiction to jurisdiction
 - inform the protected party that laws and procedures vary among the tribes and encourage the protected party to seek further assistance and information on enforcement procedures if he/she plans to travel across tribal lines
- The relief granted by the issuing jurisdiction must be enforced even if such relief is unavailable under the laws of the enforcing jurisdiction
- The laws and penalties of the enforcing jurisdiction must be followed when imposing sanctions for violations of orders
- If there is a challenge to "validity" (e.g., respondent denies receiving notice), the enforcing court should contact the issuing jurisdiction to verify information
- The issuing jurisdiction should be notified of outcomes of any enforcement proceedings in the enforcing jurisdiction

Local/State/Tribal/Federal Prosecutors

In most instances, local, state and tribal prosecutors will handle violations of orders of protection that occur across jurisdictional lines. Prosecutors should:

- Obtain information from the victim, local law enforcement, and the issuing jurisdiction

- Obtain information about all pending and past convictions
- Prosecute alleged violations in accordance with the procedures and laws of the enforcing jurisdiction
- Work to ensure victim safety

Some violations also may qualify for federal prosecution, since VAWA created a number of federal domestic violence crimes (see page 17). To determine when a case should be referred to the U.S. Attorney's office, local, state, and tribal prosecutors should contact their federal counterparts and establish working relationships. Decisions about whether to try the case in state, tribal, or federal court will depend on a variety of factors, including differences in sentencing options, witness protection, adequacy of local, state, or tribal remedies, and available victim and investigative resources.

Advocate Tips

Issuing Jurisdiction

- Assist the abused person in getting proof of service
- Work with the court and the survivor to ensure that the terms of the order are clear and specific
- Make sure that the abused person has several certified copies of the order (the court should not charge for these copies)
- Work with the court and the survivor to ensure that the following language is included in the order:
 1. Order is enforceable outside the jurisdiction
 2. Crossing jurisdictional lines to violate the order may be a federal crime under VAWA
 3. Custody provisions are made in compliance with the UCCJA or UCCJEA and PKPA
 4. The court had jurisdiction to issue the order
 5. The respondent had notice and an opportunity to be heard
- Work with the court and the survivor to ensure that the order includes a prohibition against firearm possession, if applicable under the laws of the issuing jurisdiction
- Work with the court and the survivor to ensure that the order includes required data elements for entry into the NCIC Protection Order File
- Provide copies of sect 2265 and 2266 of VAWA for the abused person to carry along with the order

- Encourage survivors to notify enforcing courts of any changes in the terms of their order
- Find out about the laws and procedures of the jurisdiction(s), including any tribal lands where the abused person will need enforcement of the order (this information is available from the state domestic violence coalition, local battered women's programs, and the organizations listed on page 22 of this guide)
- Inform the survivor about comity and assist in checking on enforcement procedures of tribal jurisdictions to which the survivor may be traveling
- Provide names, addresses, and phone numbers of court clerks, local and federal prosecutors, law enforcement, state coalitions, and local battered women's programs in the jurisdictions where the abused person may be traveling

Enforcing Jurisdiction

- Know the laws and procedures of the jurisdiction
- Work with judges, court clerks, prosecutors, and law enforcement to develop a coordinated response for enforcement of orders issued in other jurisdictions
- Check to make sure that the abused person has certified copies of the order and proof of service, or assist in obtaining them
- Inform the abused person of the laws and procedures of the jurisdiction and provide the information needed for the person to decide whether to register the order
- Remind officers that, in most jurisdictions, the protection order can be enforced on its face regardless of whether it is registered/filed in the jurisdiction or listed in a state protection order database or the NCIC Protection Order File (consult the laws and procedures of your jurisdiction)
- Inform the survivor that she/he may need to take the protection order to the tribal court to be recognized, even if she/he has a protection order issued by another tribe
- Inform the survivor that, if appropriate, she/he should take the tribal protection order to the county, state, or other local jurisdiction for registration
- Encourage state, tribal, and federal prosecutors to work together to ensure the most successful prosecution of interjurisdictional cases
- Develop relationships with federal victim/witness coordinators in order to work together to provide victim safety

Summary of Federal Crimes of Domestic Violence

Advocates need to be familiar with the new federal criminal laws that pertain to domestic violence in order to inform victims of options related to federal criminal prosecution. The contact for assess-

ment of potential federal crimes is the U.S. Attorney's office in your district. For the following federal crimes, the law defines State to include: a state of the United States, the District of Columbia, a commonwealth, territory, or possession of the United States.

Interstate Travel to Commit Domestic Violence - 18 U.S.C. sect 2261

It is a Federal crime for a person to travel interstate, or leave or enter Indian country with the intent to injure, harass or intimidate an intimate partner when in the course of or as a result of the travel the abuser commits a violent crime that causes bodily injury. The abuser must intend to commit the domestic violence at the time of travel. The definition of partner is broad and basically includes a person with whom the abuser has cohabited in an intimate relationship (including a current or former spouse) or a person who has a child in common with the abuser. It is also a Federal crime to cause an intimate partner to cross state lines, or leave or enter Indian country by force, coercion, duress, or fraud if the abuser intentionally inflicts bodily injury on the partner during or as a result of the conduct.

Interstate Stalking - 18 U.S.C. sect 2261A

It is a Federal crime to cross a state line with the intent to injure or harass any person if, during the course of or as a result of the travel, the defendant places the person or a member of the person's immediate family in reasonable fear of death or serious bodily injury. It also is a federal crime to stalk another individual within the special maritime or territorial jurisdiction of the United States (which includes federal reservations). The definition of immediate family is broad and includes a spouse, parent, child, sibling and all other household members who are related to the primary victim by blood or marriage.

Interstate Violation of an Order of Protection - 18 U.S.C. sect 2262

This law basically prohibits interstate travel or leaving or entering Indian country with intent to violate a valid protection order that prohibits credible threats of violence, repeated harassment, or bodily injury. The abuser must intend to violate the order at the time of travel and a violation of the order must occur. It is also a federal crime to cause an intimate partner to cross state lines, or to leave or enter Indian country by force, coercion, duress, or fraud, if during or as a result of the conduct, the abuser intentionally inflicts bodily injury on the victim in violation of a valid protection order.

Firearms

Federal law prohibits an abuser subject to a qualifying order of protection from possessing firearms and ammunition. 18 U.S.C. sect 922(g)(8). Abusers are not banned from possessing guns and ammunition permanently, only for the time that the order of protection is in existence. Additionally, there are "official use" exemptions, which allow law enforcement and military personnel who are subject to an order of protection to possess their service weapon while on duty.

18 U.S.C. sect 922(g)(9) prohibits gun or ammunition possession by anyone who has been convicted of a qualifying misdemeanor crime of domestic violence. The law applies to both federal and state

misdeemeanors that meet certain conditions. The gun ban is permanent, which means that if a person has been convicted of a qualifying misdemeanor, he/she can never legally possess a gun again unless the conviction has been expunged or set aside or the person has been pardoned or has had his/her civil rights restored. There is no "official use" exemption, so law enforcement officers and members of the military are subject to this law, even while on duty. The federal statute is also retroactive, so it applies to convictions that occurred before the law went into effect.

Advocate Tips

- Advocates should work to have standardized protection order forms adopted which include a warning to the defendant that possession of a firearm or ammunition while subject to a protection order may be a violation of federal law (inclusion of the firearm prohibition in the protection order may facilitate federal prosecution)
- When appropriate, advocates should encourage victims to tell the court that the defendant is in possession of firearms

Advocate's Guide Glossary of Terms

Certified - a stamp, seal, or signature of the issuing judge or clerk of court noting that the copy is an authentic duplicate of the original order of the court.

Comity - a legal principle where a sovereign nation decides voluntarily to recognize another jurisdiction's court order.

Consent Order - an order of protection which is issued, usually without a finding (legal conclusion) of abuse, but after the respondent consents or agrees to the entry of the order.

Ex parte Order - an emergency or temporary order issued at the request of the petitioner without first providing notice or a hearing to the respondent.

Indian Child Welfare Act (ICWA) - a 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. The ICWA may apply to divorces or custody proceedings where custody of the child(ren) is given to a third party. This law is significant because abusers often threaten to use the ICWA against battered women even though the ICWA does not apply to custody proceedings between the parents of the child(ren).

Jurisdiction (location) - in this guide, jurisdiction is used most commonly as a general name for the geographic areas impacted by the federal law. This includes all 50 states, Indian tribal lands, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, American Samoa, the Northern Mariana Islands, and Guam.

Issuing Jurisdiction - jurisdiction that grants the order of protection.

Enforcing Jurisdiction - jurisdiction that enforces an order of protection issued by another jurisdiction.

Jurisdiction - can also be used as a legal term to refer to the types of authority that a court may exercise.

Subject Matter Jurisdiction - refers to the authority of a court to hear and determine a particular type of case.

Personal Jurisdiction - refers to the power the court may (or may not) have over the parties involved in a particular case.

Mutual Order - a single order of protection that includes prohibitions against both the petitioner and respondent.

Parental Kidnapping Prevention Act (PKPA) - federal legislation enacted to ensure that jurisdictions honor and enforce custody orders entered by the courts of other jurisdictions so long as both parties received prior notice and were given a chance to be heard. The PKPA prioritizes home state jurisdiction so other jurisdictions have to defer to orders entered by the jurisdiction where the child lived for the six-month period prior to the filing of the action.

Petitioner - the person who presents a petition to the court requesting an order of protection.

Qualifying Misdemeanor - state or federal misdemeanor crime that has as an element the use or attempted use of physical force or the threatened use of a deadly weapon. 18 U.S.C. sect 922(g)(9).

Qualifying Protection Order - 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 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. sect 922(g)(8).

Recognition - the status granted a court order from another jurisdiction after a tribe determines it is enforceable. The tribe then issues its own order granting recognition.

Registration/Filing - refers to a procedure where an order of protection from one jurisdiction is registered or filed 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 protective order computer registry. Registration usually creates a public record of the order of protection in the enforcing jurisdiction.

Respondent - the person against whom an order of protection is filed or issued.

Tribe - an Indian nation, Indian tribe, or native sovereign nation.

Uniform Child Custody Jurisdiction Act (UCCJA) - a uniform law, enacted with few variations by all of the states, which establishes jurisdiction to render custody orders that are enforceable across jurisdictional boundaries. The UCCJA sets forth four possible bases of jurisdiction without giving priority to any one over the others. Because of this, it is still possible for more than one state at a time to establish jurisdiction over the same parties and facts and for courts to render conflicting orders in the same case. The Act is more than 30 years old and is inconsistent with some provisions of subsequently enacted federal law.

Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) - a replacement for the UCCJA currently being considered by the states and already enacted by a few. This Act establishes one jurisdictional base as having priority over the others - the state where the child has lived for the six months prior to the filing of the custody case - and builds in a number of protections for victims of domestic violence not available in the UCCJA. For example, the UCCJEA creates a structure of cooperation among the courts of the competing states so that the victim does not have to return physically to the home state in order to litigate in its courts; more comprehensive emergency jurisdiction in the refuge state; and a greater likelihood that the home state will voluntarily relinquish jurisdiction if it would be unsafe for the victim to litigate there.

Helpful Interventions/Effective Advocacy

Advocate Checklist

Issuing Jurisdiction

- If appropriate, assist the survivor in filing a cross petition if the abuser files for an order first
- Work with the court and the survivor to ensure that the following language is included in the order:
 1. Order is enforceable outside the jurisdiction
 2. Crossing jurisdictional lines to violate the order may be a federal crime under VAWA
 3. Custody provisions are made in compliance with the UCCJA or UCCJEA and PKPA
 4. The court had jurisdiction to issue the order
 5. The respondent had notice and an opportunity to be heard
- Work with the court and the survivor to ensure that the order includes a prohibition against firearm possession, if applicable under the laws of the issuing jurisdiction
- Work with the court and the survivor to ensure that the order includes required data elements for entry into the NCIC Protection Order File
- Work with the judge to ensure that the terms of the order are clear and specific

- Assist the abused person in getting proof of service
- Make sure that the survivor has several certified copies of the order and carries one at all times
- Inform the survivor about recognition/comity and assist in checking on procedures of the particular tribal jurisdiction
- Provide copies of sect 2265 and 2266 of VAWA for the survivor to carry along with the order
- Get information about the laws and procedures of the enforcing jurisdiction(s)
- Provide names, addresses, and phone numbers of court clerks, local and federal prosecutors, law enforcement, the state coalition, and local battered women's programs in the jurisdiction(s) the abused person may be traveling
- If the victim has left the issuing jurisdiction, help the victim find someone who will accept service for any future attempts to change the order
- Help the survivor develop a detailed safety plan

Enforcing Jurisdiction

- Know the laws and procedures of the jurisdiction
- Work with judges, court clerks, prosecutors and law enforcement to develop a coordinated response to orders issued in other jurisdictions
- Make sure that the survivor has certified copies of the order and proof of service, or assist in obtaining them
- Inform the abused person of the laws and procedures of the jurisdiction
- If registration is optional or mandatory, provide the information needed for the person to decide whether to register the order
- Remind officers that, in most jurisdictions, the protection order can be enforced on its face regardless of whether it is registered/filed in the jurisdiction or listed in a state protection order database or the NCIC Protection Order File (consult the laws and procedures of your jurisdiction)
- For custody issues, assist the abused person in getting legal representation
- Inform survivor that she/he may need to take the protection order to the tribal court to be recognized, even if she/he has a state protection order or a protection order from another tribe
- Inform survivor that, if appropriate, she/he should take a tribal protection order to the county, state, or other local jurisdiction for registration

- Develop relationships with federal victim/witness coordinators in order to work together to provide victim safety

Technical Assistance on Full Faith and Credit Implementation

Assistance to Victims of Domestic Violence

National Domestic Violence Hotline (800) 799-SAFE TTY (800) 787-3224 (24 hours/day, for referral to state and local programs)

Technical Assistance on Full Faith and Credit

Full Faith and Credit Project (800) 256-5883

International Association of Chiefs of Police (800) The-IACP

Battered Women's Justice Project (Civil) (800) 903-0111 ext. 2

Battered Women's Justice Project (Criminal) (800) 903-0111 ext. 1

Expertise on Tribal Issues

Sacred Circle (877) 733-7623

Mending the Sacred Hoop (888) 305-1650

Northern Plains Tribal Judicial Institute (701) 777-6176

American Indian Law Center (505) 277-5462

Expertise on Custody Issues

Family Violence Department of the National Council of Juvenile and Family Court Judges (800) 527-3223

Domestic Violence Commission of the American Bar Association (202) 662-1737

Expertise on Immigration Issues

National Immigration Project of the National Lawyers Guild (617) 227-9727

Family Violence Prevention Fund (415) 252-8900

Special Issues: Advocating for Immigrant Survivors of Domestic Violence

When an immigrant survivor tries to obtain or enforce a protection order, she may face difficult issues related to the risk of deportation of her non-citizen abuser and potentially of herself or other household members. Police and courts deal with immigrant victims in very different ways depending on the jurisdiction. Assessing risks and options with immigrant victims is a complicated task.

Survivors of domestic violence who have questions on immigration law should be referred to an attorney who has expertise in immigration and domestic violence issues. Any of the offices of the National Network on Behalf of Battered Immigrant Women (listed below) may also be contacted for a phone consultation.

For technical assistance or more information, call the National Immigration Project of the National Lawyers Guild at (617) 227-9727 or the Family Violence Prevention Fund at (415) 252-8900.

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