
Full Faith and Credit Judge's Bench Card

National Council of Juvenile and Family Court Judges

Copyright © 1994 Office on Violence Against Women

1994



Table of Contents

Protection Across Jurisdictions: Full Faith & Credit Laws and Enforcement	2
18 U.S.C. § 2265: Full Faith and Credit Given to Protection Orders	2
What is an Order of Protection?	3
Intent of the Law	3
Tribal Orders	4
Criminal Protection Orders	4
Child Custody	4
Military Orders	4
Federal Firearms Provisions	5
Qualifying Protection Orders under § 922 (g) (8)	5
A Qualifying Order also must include either:	5
Salient Features of § 922 (g) (8)	5
Gun Control Act (1996 Lautenberg Amendment) 18 U.S.C. § 922 (g) (9)	6
Qualifying Domestic Violence Misdemeanors under Lautenberg	6
Creating a Climate of Safety in the Judicial System	6
What to Expect from Law Enforcement	6
The Enforcing Court: Full Faith & Credit	7
What is the Source of my Authority?	7
Is it Enforceable?	7
What about Orders against both Parties?	7
What else should I do to Facilitate Protection?	8
What Terms must I Enforce? What Enforcement Procedures should I Apply?	8
Are there Firearms Considerations?	8
The Issuing Court: Full Faith & Credit	9
How can I make my Orders easier to Enforce?	9
What else should I do to Facilitate Protection?	9
Are there Firearms Considerations?	10
Technical Assistance and Further Information	10

Protection Across Jurisdictions: Full Faith & Credit Laws and Enforcement

18 U.S.C. § 2265: Full Faith and Credit Given to Protection Orders

- a. Full faith and credit. 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.

- b. Protection order. A protection order issued by a State or tribal court is consistent with this subsection if --

1. such court has jurisdiction over the parties and matter under the law of such State or Indian tribe; and
 2. reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of *ex parte* orders, notice and opportunity to be heard must be provided within the time required by State or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.
- c. Cross or counter petition. A protection order issued by a State or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if --
1. no cross or counter petition or complaint, or other written pleading was filed seeking such a protection order; or
 2. a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

What is an Order of Protection?

Under VAWA (18 U.S.C. § 2266), a protection order "includes 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) whether obtained by filing an independent action or as a pende te lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection."

Intent of the Law

For Victims

- Cross-jurisdictional protection afforded by valid protection orders.

For Abusers

- Cross-jurisdictional accountability for violation of valid protection orders.

For Judges

- Interstate recognition and enforcement of the valid protection orders they enter.
- Endorsement of valid protection orders they may encounter from other jurisdictions.

Tribal Orders

The full faith and credit provision applies to orders issued by tribal courts. State courts are required to recognize and enforce valid tribal court orders of protection.

Criminal Protection Orders

The full faith and credit provision applies to valid criminal orders of protection. Generally issued as a condition of release, probation, or parole, such orders may be difficult to enforce because of verification problems and because of a lack of arrest authority in the enforcing jurisdiction.

The issuing court should determine whether extradition is necessary. The enforcing jurisdiction should respond to underlying crimes committed in the jurisdiction.

Consider issuing a free-standing civil or criminal protection order to avoid potential problems.

Child Custody

The courts should act to protect the safety and welfare of the children of either party.

If the enforcing state court has jurisdiction over custody matters and:

- The protection order contains custody or visitation provisions and complies with the parental Kidnapping Prevention Act (PKPA) and the issuing state's Uniform Child Custody Jurisdiction Act (UCCJA) or Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) provisions, the court should enforce the protection order.
- The protection order is silent on custody or visitation, the court should accept emergency jurisdiction if permitted by its state UCCJA/UCCJEA provisions and proceed pursuant to those provisions.
- The protection order contains custody or visitation provisions and complies with the PKPA and UCCJA/UCCJEA, and the petitioner seeks modification based on a change of circumstances, the court should accept emergency jurisdiction if permitted by its UCCJA/UCCJEA provisions and proceed pursuant to those provisions.

If the enforcing court does not have jurisdiction over custody matters, the judge should act to protect the children and refer the custody and visitation issues to the appropriate state court for disposition.

Military Orders

Since VAWA does not address military orders, state courts should develop agreements with local military installations concerning their enforcement of state court protection orders.

Federal Firearms Provisions

Gun Control Act of 1994-18 U.S.C. § 922 (g) (8)

Applies to persons subject to "qualifying" state protection orders. It is unlawful for such persons while the protection order is in effect to:

- Possess a firearm or ammunition.
- Ship or transport firearms or ammunition in interstate or foreign commerce.
- Receive any firearm or ammunition which has been so shipped or transported.
- Have seized firearms returned.

Qualifying Protection Orders under § 922 (g) (8)

A qualifying order is one that prohibits:

- Harassing
- Stalking
- Threatening an intimate partner or the child of such a partner, or
- Engaging in other conduct which would place an intimate partner in reasonable fear of bodily injury to self or child.

Intimate partner: current or former spouse, co-parent, or one who cohabits or has cohabitated with the subject of the protection order.

A Qualifying Order also must include either:

- A finding that the person subject to the order represents a credible threat to the safety of intimate partner or child, or
- An explicit prohibition against use, attempted use or threat of physical force against an intimate partner or child which would reasonably be expected to cause bodily injury.

Salient Features of § 922 (g) (8)

Applies only to protection orders issued after a person has had actual notice and opportunity to be heard.

- Includes a broad definition of "firearms" and "ammunition."
- Does not apply to official use by military or law enforcement personnel while on duty.

Gun Control Act (1996 Lautenberg Amendment) 18 U.S.C. § 922 (g) (9)

Applies to persons convicted of a qualifying misdemeanor crime of domestic violence.

- Imposes criminal liability on anyone who has been convicted of a qualifying misdemeanor crime of domestic violence and subsequently possesses, ships or transports a firearm or ammunition.
- Applies to qualifying convictions that occurred both before and after September 30, 1996.
- Carries no official-use exemption for law enforcement or military personnel.

Qualifying Domestic Violence Misdemeanors under Lautenberg

A qualifying domestic violence misdemeanor is one that:

- Constituted a violation of either federal or state law.
- Had as an element either use or attempted use of physical force or threatened use of a deadly weapon.
- The accused was represented by counsel or made a valid waiver and, if entitled to trial by jury, was so tried or made a valid waiver.
- Was committed by a current or former spouse, parent or guardian of the victim; a person with whom the victim shares a child in common; a person who is cohabitating or has cohabitated with the victim as spouse, parent or guardian of the victim or a person similarly situated to the spouse, parent or guardian of the victim.

Creating a Climate of Safety in the Judicial System

- Provide leadership to ensure the establishment of clearly defined, "user-friendly" procedures for processing requests for enforcement of protection orders and incorporate the procedures into regular training.
- Provide local safety information to persons seeking enforcement.
- Develop linkages to other agencies with related responsibilities.
- Publish local contact information for the court and access that of other jurisdictions.

What to Expect from Law Enforcement

- A responding officer must enforce the terms and conditions of the order as written.
- Officer in the enforcing jurisdiction must comply with all laws, policies and procedures of their own jurisdiction concerning violations of protection orders, such as mandatory arrest and victim notification, if appropriate.

The Enforcing Court: Full Faith & Credit

What is the Source of my Authority?

Full Faith & Credit

Since 1994, the Violence Against Women Act's full faith and credit provision (18 U.S.C. § 2265) has required every jurisdiction in the United States to recognize and enforce valid protection orders.

These jurisdictions include:

- A state and its political subdivisions
- A tribal government
- The District of Columbia
- A commonwealth, territory or possession of the United States. (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands)

Is it Enforceable?

Elements of an Enforceable Order

- The respondent is given notice and an opportunity to be heard, or, in the case of an ex parte order, the respondent will be given notice and an opportunity to be heard within a reasonable time, consistent with the requirements of due process.
- The issuing court had personal and subject matter jurisdiction to issue the order.
- The order has not expired.
- **A protection order from another jurisdiction that has these elements must be afforded a presumption of enforceability.**

What about Orders against both Parties?

Mutual Orders

Mutual orders are fully enforceable against the respondent. Provisions against the petitioner are not entitled to interstate/tribal enforcement if:

- No cross or counter petition, complaint, or other written pleading was filed by the respondent seeking such a protection order; or
- A cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

What else should I do to Facilitate Protection?

Facilitating Protection

- Communicate with the issuing court to clear up ambiguities, verify validity, establish the status of service, etc.
- Be aware that some state and tribal laws impose additional requirements beyond VAWA. For example, VAWA requires enforcement of out of state and tribal orders, but does not require registration, as a few state statutes do.
- Notify protected parties of the National Domestic Violence Hotline number (800-799-SAFE, TTY 800-787-3224).

What Terms must I Enforce? What Enforcement Procedures should I Apply?

Enforcing Protection Orders of Other Jurisdictions

A. Enforce the terms of the order, even if the enforcing jurisdiction would have no authority to enter such terms, as in cases where:

- Category of protected persons would not be eligible for relief in enforcing jurisdiction;
- Order contains relief unavailable in enforcing jurisdiction;
- Order has longer duration than provided for in enforcing jurisdiction; or
- Order calls for surrender of weapons and enforcing jurisdiction has no such provision. (See also Firearms below)

B. Use the enforcement procedures of the enforcing jurisdiction.

- Treat the violation as a criminal offense if it is criminalized in the enforcing jurisdiction.
- Award attorney's fees if sought and if provided for in enforcing jurisdiction.

Are there Firearms Considerations?

Firearms

In addition to any state, tribal or territorial laws on firearms, certain federal firearms restrictions may apply in some protection order cases.

- A defendant may not obtain, possess or transport a firearm or ammunition for the duration of the qualifying protection order.

- A defendant who has been convicted of a qualifying misdemeanor crime of domestic violence may not possess a firearm or ammunition.
- It may be a crime to sell or otherwise dispose of a firearm or ammunition to any person known to be prohibited from obtaining or possessing a firearm.

The Issuing Court: Full Faith & Credit

How can I make my Orders easier to Enforce?

Crafting an Enforceable Order

- Use clear and concise language in a legible order. For example, when crafting visitation provisions, be precise about times, location, persons and duration, and avoid vague and unenforceable terms such as "reasonable."
- State in the order that the respondent had notice and opportunity to be heard.
- Comply with the Parental Kidnapping Prevention Act (PKPA) and the Uniform Child Custody Jurisdiction Act (UCCJA) or Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) for custody and visitation provisions within protection orders.
- Cite the state statute upon which the court's decision and order are based. Provide the court's telephone number and, where available, the state registry telephone number.
- State the duration of the order and its expiration date, if any.
- For a mutual order indicate that a pleading was filed by each party, and make a written finding that each party is entitled to protection.

What else should I do to Facilitate Protection?

Facilitating Protection

- Inform the parties orally and in writing that the order is enforceable in all 50 states, U.S. territories, tribal lands and the District of Columbia. Inform the parties that they should not assume other courts or counsel are familiar with full faith and credit.
- Indicate in writing or certify on the order that the order complies with VAWA's full faith and credit provision (18 U.S.C. § 2265) and meets the definition under U.S.C. § 2266.
- Provide the protected parties certified copies of the order and advise them to keep one with them at all times.

- Indicate on the face of the order whether there has been reasonable notice and opportunity to be heard. It is good practice to have the respondent, if present, sign an acknowledgment of service on the face of the order.
- State that violation of the order, in addition to any state or tribal sanctions, may subject the respondent to prosecution for such federal crimes as:
 - Firearms possession
 - Interstate travel to commit domestic violence
 - Interstate stalking
 - Interstate violation of a domestic violence order.
- At the request of the enforcing court, consult to clear up ambiguities, verify validity, establish the status of service, etc.
- Notify the protected party of the National Domestic Violence Hotline number (800-799-SAFE, TTY 800-787-3224).

Are there Firearms Considerations?

Firearms

In addition to any state, tribal or territorial laws on firearms, certain federal firearms restrictions apply in some protection order cases.

- A defendant may not obtain, possess or transport a firearm or ammunition for the duration of the qualifying protection order.
- A defendant who has been convicted of a qualifying misdemeanor crime of domestic violence may not possess a firearm or ammunition.
- It may be a crime to sell or otherwise dispose of a firearm or ammunition to any person known to be prohibited from obtaining or possessing a firearm.
- To facilitate enforcement of the federal firearms restrictions, include in the order the specific findings (see 18 U.S.C. § 922 (g) (8)) regarding the grounds for issuing the order.

Technical Assistance and Further Information

Domestic Violence Assistance to Judges

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

Technical Assistance on Full Faith and Credit

Full Faith and Credit Project

a project of the Pennsylvania Coalition Against Domestic Violence

(800) 256-5883

Battered Women's Justice Project

(800) 903-0111, ext. 2.

Technical Assistance for Law Enforcement

International Association of Chiefs of Police

(703) 836-6767, ext. 216

Website for Violence Against Women Office, U.S. Department of Justice

<http://www.ovw.usdoj.gov/>

Assistance for Tribal Court Orders

American Indian Law Center, Inc. (505) 277-5462

Northern Plains Tribal Judicial Institute (701) 777-6176

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)

For print copies of the Judge's Bench Card, please contact the National Council of Juvenile and Family Court Judges at 1-800-527-3223.

Resolved: That the Conference of Chief Justices and the Conference of State Court Administrators express their commitment to taking the necessary steps to support implementation of the Full Faith and Credit Provision of the Violence Against Women Act (18 U.S.C. § 2265).

This project was supported by grant no. 1999-WE-VX-K004 awarded by the Violence Against Women Office, Office of Justice Programs, U.S. Department of Justice.