
Protecting Victims of Domestic Violence

A Law Enforcement Officer's Guide to Enforcing Orders of Protection Nationwide

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What is full faith and credit ?

In 1994, Congress enacted the Violence Against Women Act (VAWA) directing jurisdictions ¹ to give full faith and credit to valid orders of protection issued by other jurisdictions. 18 U.S.C. sect 2265.

Simply stated, *full faith and credit* requires that: Valid orders of protection must be enforced to protect victims of domestic violence wherever a violation of an order occurs, regardless of where the order was issued.

What does this mean for victims?

Abused persons who are granted orders of protection can now call upon law enforcement to protect them and to take all appropriate action against abusers nationwide.

What does this mean for abusers?

The abuser is bound by the terms and conditions of the order of protection and may be arrested ² and charged with violating the order and committing other substantive crimes wherever the abuser violates a valid order. It does not make any difference where the order was granted. The abuser must be arrested for a violation of an order of protection if the law of the jurisdiction where the violation occurred requires an arrest.

What does this mean for law enforcement?

If an order of protection is valid in the issuing jurisdiction, it must be enforced in every other jurisdiction. Some jurisdictions grant orders:

- to victims who might not be eligible for orders in the enforcing jurisdiction
- for periods of time longer than authorized in the enforcing jurisdiction
- containing directives against abusers that might not be available in the enforcing jurisdiction

A responding officer **MUST ENFORCE** the terms and conditions of the order as written. Officers are not required to know the laws of the issuing jurisdiction in order to enforce orders of protection. Officers in the enforcing jurisdiction must comply with all laws, policies, and procedures of their

¹For the purposes of brevity, the term "jurisdiction" will be used to refer to a State, the District of Columbia, a commonwealth, territory, or possession of the United States, and to Indian tribes.

²For tribal law enforcement technical assistance regarding arrest, contact Sacred Circle.

own jurisdiction concerning violation of orders of protection, such as mandatory arrest and victim notification, if applicable.

Why is Full Faith and Credit Important?

When victims of domestic violence leave, they and their children are at an increased risk of violence. Abusers who cross jurisdictions in pursuit of victims may be engaged in stalking, which is a significant risk indicator of life-threatening violence.

Liability for failure to enforce orders of protection

The mandate to give full faith and credit to valid orders of protection nationwide confronts law enforcement with new challenges, including the possibility of liability for failure to enforce orders of protection from other jurisdictions. Many jurisdictions have laws that provide officers with statutory immunity from liability when an officer takes reasonable action to protect a victim in a domestic violence case.

Failure to enforce a valid order of protection based on the fact that it was issued in another jurisdiction may leave officers and departments vulnerable to liability.

Reducing the risk of liability:

- Understand the laws of the enforcing jurisdiction related to liability
- Respond in a timely fashion
- Investigate thoroughly
- Follow arrest laws of enforcing jurisdiction
- Offer assistance and referral to victim
- Complete detailed incident reports
- Charge appropriately
- Follow up for victim protection
- Train all law enforcement personnel
- Supervise carefully to assure victim safety
- Confiscate proscribed weapons

Full Faith and Credit Orders of Protection

Issuing jurisdiction determines:

- Whether an order of protection should be issued
- Who is to be protected
- Terms and conditions of the order
- Duration of the order

Enforcing jurisdiction determines:

- How the order is enforced
- Arrest authority of responding officer
- Detention and notification procedures
- Crimes charged for violation of an order

What is an Order of Protection?

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.

The Federal full faith and credit provision of VAWA applies to both criminal and civil orders of protection. **Orders may vary in form, content, length, layout and names** (i.e., stay away, restraining, criminal, and emergency or temporary protection order).

In some jurisdictions, a certification form is affixed to the order of protection verifying that it is a valid order of the court. However, under Federal law, a certification form is not required for the order of protection to be enforced. Nor is there any requirement that the order or the signature of the issuing authority be original or that there be a raised seal or stamp of the court on the document. Additionally, there is no requirement in the Federal law that a victim must register the order of protection in the enforcing jurisdiction before that jurisdiction enforces the order.

Basic Elements of a Valid Order of Protection

Any order of protection should be presumed valid if all of the following are found:

- The order gives the names of the parties

- The order contains the date the order was issued, which is prior to the date when enforcement is sought
- If the order has an expiration date, the date of expiration has not occurred
- The order specifies terms and conditions against the abuser
- The order contains the name of the issuing court
- The order is signed by or on behalf of a judicial officer

Determining the Terms and Conditions of an Order of Protection

After providing for victim and officer safety, it is essential that the officer read the order in its entirety. An order may state something in one paragraph and specify exceptions in another. For example, an order may state that the abuser is to have "no contact" with a victim in one paragraph, and then in another state that contact may occur to arrange for visitation with the children. In this case, if the abuser contacted the victim for any reason other than to arrange for visitation, the order was violated.

Verifying the Terms and Conditions of an Order of Protection

Although verification is not required under 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).

Verification can be accomplished by any one of the following methods:

- Confirm the elements of a order in the NCIC Protection Order File
- Review the elements of an order in State or local registries of protection orders in the issuing jurisdiction
- Confirm the elements by communication with the issuing court
- Review the elements of an order if previously filed with designated authorities in the enforcing jurisdiction
- Draw upon personal knowledge of the officer

Evaluating the Enforceability of an Order of Protection

An order of protection issued in another jurisdiction is enforceable when:

- The order appears to be valid
- There is probable cause to believe that a violation of the order occurred in the enforcing jurisdiction

Where enforcement requirements have not been met, the officer in the enforcing jurisdiction may not be able to arrest specifically for a violation of the order. However, other potentially chargeable offenses may have occurred. The officer should make a warrantless arrest or seek an arrest warrant related to the criminal conduct based on the enforcing jurisdiction's law.

Mutual Orders of Protection

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 inter-jurisdictional enforcement of this type of order. Basically it states that an order should be enforced against the respondent (person against whom the order was issued) and not the petitioner unless 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.

What Enforcement Action should be Taken?

Immediate Action

- Ensure the safety of all involved
- Seek medical attention, if necessary
- Safeguard the victim from further abuse
- Secure and protect the crime scene
- Seek voluntary surrender of firearms for safekeeping purposes
- Seize firearms subjects to State, territorial, local, or tribal prohibitions
- Identify whether an order of protection has been violated
- Evaluate the validity and enforceability of the order
- Arrest for violation of the order where required by the enforcing jurisdiction
- Arrest for any other criminal offenses
- Seek an arrest warrant, when required, related to the criminal conduct if the abuser is not at the scene
- Attempt to locate and arrest the abuser

Firearms

Federal law prohibits an abuser subject to a qualifying order of protection from possessing firearms and ammunition. 18 U.S.C. 922 sect (g)(8). When an officer determines that a valid order of pro-

tection has been issued against an abuser, the officer should enforce the firearms prohibition. Seizing weapons subject to this prohibition, if allowed under State law, is essential to victim and community safety. Officers also should be knowledgeable about their own jurisdiction's law authorizing or precluding possession or transfer of weapons to third parties by a person subject to an order of protection.

"Providing the victim with referral information at the scene of a domestic incident can be the most important action an officer can take to stop domestic violence." Bobby Moody, IACP President

Summary of Federal Crimes of Domestic Violence

Officers must be familiar with Federal laws that pertain to domestic violence in order to assess whether Federal crimes have been committed.³

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 cohabitated 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 to 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 traveler places the person or a member of the person's immediate family in reasonable fear of death or serious bodily injury. The definition of immediate family is broad and includes a spouse, parent, child, sibling and all household members 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 forbids 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 to the victim in violation of a valid protection order.

³Legislation is being considered that may change some of the laws. Contact the U.S. Attorney in your jurisdiction for an update. 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.

Helpful Interventions

Referral Actions

- Address transportation and housing needs of victims by making appropriate referrals to community services
- Refer victim to issuing jurisdiction for enforcement of economic provisions within order of protection
- Refer victim to the appropriate court or victim advocacy agency to obtain assistance in enforcing the economic provisions of an order, such as child support enforcement

Assessing Lethality

Factors to consider in determining serious injury/lethality potential ⁴:

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

Safety Strategies

- Notify victim of legal rights within enforcing jurisdiction
- Assess lethality

⁴These factors can be helpful in many cases, but are not guaranteed predictors of future violence

- Conduct safety planning with the victim
- Provide telephone numbers for local shelters and hotlines
- Follow up by law enforcement and victim advocacy programs

Questions Frequently asked about Full Faith and Credit

What if the victim does not have a copy of the order of protection?

- Seek to verify the existence of an order
- Verify victim's claim of a order of protection through reliable and credible information
- Confirm through abuser's statement that an order of protection exists
- Determine whether there is probable cause to believe that the abuser has committed a criminal offense
- Arrest abuser if appropriate under enforcing jurisdiction's law and notify issuing authority of arrest
- Refer victim to appropriate court or advocacy agency

What if the abuser claims no notice or service of an order of protection?

- Verify the existence of an order
- Give notice to abuser of terms of the order of protection and provide abuser with a copy
- Explain consequences of future violations to the abuser
- Notify issuing authority that the abuser received notice and/or a copy of the order of protection
- Notify issuing authority of arrest, if applicable

What if the abuser has violated the order of protection and then fled the scene?

- Determine if abuser's actions warrant arrest
- Follow departmental procedure for dealing with a criminal suspect who has fled the scene
- Conduct safety planning and refer victim to appropriate court or advocacy agency

What if the order of protection gives relief not authorized in officer's jurisdiction?

- Enforce terms and conditions of the order of protection as written
- Enforce for duration specified in the order of protection
- Enforce on behalf of victim(s) named in the order of protection

Technical Assistance on Full Faith and Credit Implementation

Technical assistance is available to law enforcement and victims of domestic violence to answer specific questions and to facilitate effective enforcement.

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

- International Association of Chiefs of Police (800) The-IACP
- Full Faith and Credit Project (800) 256-5883
- Battered Women's Justice Project (800) 903-0111, ext.2

Expertise on the Tribal Legal Issues

- Sacred Circle (877) 787-3244
- Mending the Sacred Hoop (888) 305-1650
- American Indian Law Center (505) 277-5462
- Northern Plains Tribal Judicial Institute (701) 777-6176

"Law enforcement officers play a crucial role in ensuring that protection orders are enforced so that a victim is safe no matter where in the country she goes." Janet Reno, Attorney General of the United States

Enforcing Orders of Protection

Federal law requires that all valid orders of protection granted by a court of any jurisdiction be recognized and enforced as if they were issued by a court where the violation occurred.

Responding Officer's Procedures

A responding officer must enforce the terms and conditions of the order as written by the issuing jurisdiction.

The order of protection is presumed valid if it has the correct names of the parties, has not expired, and is signed by an issuing authority. It should be enforced pursuant to departmental policy and the laws of the enforcing jurisdiction.

Immediate Action

If the named respondent committed an offense under the criminal laws in the officer's jurisdiction and/or violated the court order, the officer should:

- Arrest respondent pursuant to the enforcing jurisdiction's law and departmental policy
- Initiate criminal complaint against respondent for the crime(s) committed and for violation of the order

Referral Actions and Safety Strategies

- Refer victims to the appropriate domestic violence program and court to seek relief
- Refer victims to the National Domestic Violence Hotline: (800) 799-SAFE, TTY (800) 787-3224
- Assist victims in strategically planning for their safety
- Notify victims of their legal rights in the enforcing jurisdiction

Firearms Seizure/Removal

If a qualifying order of protection has been issued, the officer should take possession of all weapons in the abuser's possession through voluntary means or through application of local, State, tribal, territorial and Federal laws pursuant to departmental policy.

Summary of Federal Crimes

If an officer concludes that Federal law was violated, the officer or supervisor in accordance with departmental procedure should contact a designated prosecutor for possible prosecution by the U.S. Attorney's office.

Interstate Domestic Violence

- Defendant crossed State⁵ or entered or left Indian country with intent to injure, harass or intimidate that person's spouse or intimate partner, and defendant, in course of or as a result of such travel, intentionally committed a crime of violence and caused bodily injury to such spouse or intimate partner.
- Defendant caused spouse or intimate partner to cross State line or to enter or leave Indian country by force, coercion, duress or fraud in order to commit the above offenses.

Interstate Violation of Order of Protection

- Defendant crossed State line or entered or left Indian country with intent to violate order of protection and then violated the order of protection by making a threat or committing harassment or bodily injury.
- Defendant caused victim to cross State line or to enter or leave Indian country by force, coercion, duress, or fraud and, in the course of, or as a result of such conduct, intentionally injured the victim in violation of an order of protection.

Interstate Stalking

- Defendant crossed State line with the intent to injure or harass another person and caused the person to fear death or serious bodily injury to himself or herself or to immediate family or related household members.

Office of the Attorney General Washington, D.C. 20530

"Through its full faith and credit provision, the Violence Against Women Act is designed to ensure that valid protection orders are enforced in each and every jurisdiction in America. The statute affords important and often lifesaving protection for victims of domestic violence who cross state or tribal lines--whether to go to work, visit relatives, or seek safe haven from abuse. Law enforcement officers play a crucial role in ensuring that protection orders are enforced so that a victim is safe no matter where in the country she goes. I hope that you will find this booklet helpful in your efforts to stop domestic violence and save lives.

Janet Reno Attorney General of the United States

International Association of Chiefs of Police

To America's Law Enforcement Officers:

⁵'State' includes a state of the United States, the District of Columbia, a commonwealth, territory or possession of the United States.

Protecting victims of domestic violence is a critical part of our job. The actions you take in these situations can clearly save lives. Orders of protection are issued to ensure the safety of victims of domestic violence. We need to enforce these orders to the *best* of our abilities. The "full faith and credit" component of the 1994 Violence Against Women Act requires law enforcement officers to enforce valid orders across the boundaries of states, tribes and territories. *Once an order of protection is issued by a jurisdiction, it is enforceable in any other jurisdiction in the United States* . Both the Attorney General and the IACP are deeply concerned about domestic violence. This booklet is an excellent primer on orders of protection and full faith and credit. I urge you to read it--and act on it.

Bobby D. Moody IACP President