

A Prosecutor's Guide to Full Faith and Credit for Protection Orders:

Protecting Victims of Domestic Violence



WHAT IS FULL FAITH AND CREDIT?

The federal Violence Against Women Act (VAWA) requires states, tribes, and territories to give full faith and credit to protection orders issued by other jurisdictions.¹ 18 U.S.C. § 2265 (2006). Full faith and credit means

that jurisdictions must honor and enforce criminal and civil protection orders issued in other states, tribes, and territories.

“Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and

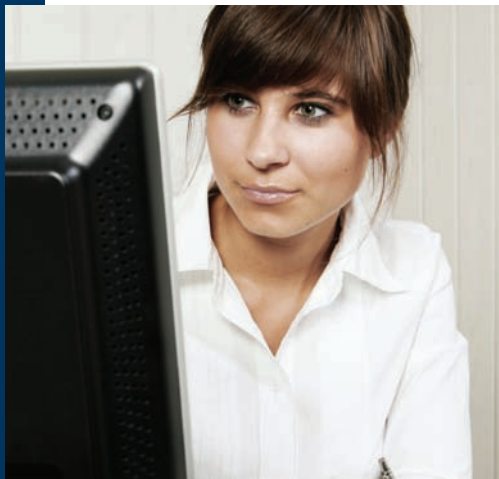
law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State or tribe.” 18 U.S.C. § 2265(a).

The statute requires that the issuing court have personal and subject matter jurisdiction, and that the respondent have reasonable notice and an opportunity to be heard sufficient to protect due process. *See* 18 U.S.C. § 2265 (b).

The Violence Against Women Act of 2005 (effective January 5, 2006) amended the full faith and credit provision to clarify that § 2265 applies to territories. The statute now clearly states that law enforcement personnel and the courts must enforce protection orders issued in other jurisdictions.

The definition of “protection order” (18 U.S.C. § 2266(5)(A)) was modified to include “restraining orders or any other order issued by a civil or criminal court” and to add “sexual violence” to the enumeration of conduct these orders are designed to prevent. The prior language on support, child custody, and visitation was clarified. 18 U.S.C. § 2266(5)(B).

In addition, the new language prohibits a state, Indian tribe, or territory from making publicly available on the Internet any information regarding the registration or filing of a protection order, restraining order,



or injunction in the issuing or enforcing state, tribe, or territory, if such publication would be likely to publicly reveal the identity or location of the party protected under such an order. 18 U.S.C. § 2265(d)(3). This language sharply limits the information government agencies may maintain in public postings or databases of protection orders on the Internet.

The full faith and credit provision also provides that:

- A protection order that is otherwise consistent with the requirements of § 2265 must be given full faith and credit even if the enforcing jurisdiction requires the filing or registration of the order, and the order has not been filed or registered. 18 U.S.C. § 2265(d)(2).
- An enforcing jurisdiction may not notify the respondent upon the filing or registration of a protection order issued in another jurisdiction, unless the protected person requests it. 18 U.S.C. § 2265(d)(1).
- Tribal courts have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms. 18 U.S.C. § 2265(e).



What Full Faith and Credit Means for . . .

Victims

Victims who travel, work, or relocate can expect that their protection orders will be enforced in all jurisdictions. Presenting a certified copy of a protection order should expedite enforcement.

Law Enforcement Officers

Persons employed by public law enforcement agencies (e.g., police, sheriff, probation, and correctional institutions) should enforce any facially valid protection order issued by a court in another jurisdiction in the same manner as they enforce orders issued in their own jurisdiction.

Prosecutors

Prosecutors can hold offenders accountable for violations of enforceable protection orders issued in all jurisdictions. By vigorously enforcing protection orders, prosecutors can enhance the safety of victims.

Judges

Judges should issue clear and comprehensive orders that contain explicit warnings about possible state and federal consequences for violation. Judges must enforce orders issued elsewhere.

Court Staff

Court staff can establish procedures that expedite enforcement of orders issued outside their judicial district and that safeguard both identifying information and the whereabouts of victims.

Advocates

Advocates can assist victims in obtaining enforceable protection orders and in facilitating enforcement wherever victims go. Advocates should promote legal system coordination to enforce protection orders and safeguard victims. Advocates should provide victims with contact information for advocacy services in destination communities.

Abusers

Abusers will be held accountable for violations of protection orders across the country.

Which jurisdictions are covered?

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 are covered.

How is a protection order defined?

Under the full faith and credit provision, the term “protection order” is defined as:

- (A) any injunction, restraining order, or any other order issued by a civil or criminal court 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 temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a *pendente lite* order in another proceeding so long as any civil or

- criminal order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection; and
- (B) 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).

PROTECTION ORDERS COVERED BY THE FEDERAL FULL FAITH AND CREDIT PROVISION

The full faith and credit provision applies to enforceable civil and criminal protection orders, injunctions, or restraining orders issued by tribes, territories, or states, whether 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, juvenile court protection order, conditions of release order, and conditions of probation order).

When is a protection order enforceable?

For a protection order to be enforceable, it must meet the following conditions:

- The court that issued the order must have had **personal** and **subject matter jurisdiction**. 18 U.S.C. § 2265(b)(1).
- The respondent must have had reasonable **notice** and an **opportunity to be heard** sufficient to protect the respondent's right to due process. 18 U.S.C. § 2265(b)(2).

Ex Parte Orders

If the protection order is ex parte, notice and opportunity to be heard must be provided within the time required by the law of the issuing jurisdiction, and within a reasonable period of time after the order is issued, sufficient to protect the respondent's due process rights. 18 U.S.C. § 2265(b)(2). This means that the protection order is enforceable as long as there will be an opportunity to be heard within a reasonable period of time before a final order is issued.

Mutual Orders

In a single protection order issued against both parties, provisions against the petitioner are not entitled to full faith and credit 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. 18 U.S.C. § 2265(c).

Which jurisdiction's laws apply?

The jurisdiction that issues the order determines:

Who is protected

Example: A protection order must be enforced even if the protected party would not be eligible for a protection order in the enforcing jurisdiction (e.g., the victim is the same sex as the respondent, and in the enforcing jurisdiction, a petitioner could not obtain a protection order against a same-sex partner).

The terms and conditions of the order

Example: A protection order is enforceable even if it includes relief that is not available in the enforcing jurisdiction (e.g., the protection order requires relinquishment of firearms, but the enforcing jurisdiction's protection order code does not provide for such relief).

How long the order is in effect

Example: A protection order must be enforced even if it remains in effect for a longer duration than protection orders issued in the enforcing jurisdiction (e.g., a protection order issued for the lifetime of the victim must be enforced in a jurisdiction that issues orders for a maximum of one year).

The jurisdiction that enforces the order determines:

How the order is enforced

Example: If it is a crime to violate an order in the enforcing state but not in the issuing state, the defendant faces criminal liability in the enforcing state.

The arrest authority of responding law enforcement

Example: If violation of a protection order requires arrest in the enforcing state, then law enforcement must arrest for violation of an order issued in another jurisdiction.

Detention and victim notification of release

Example: If the enforcing state's code provides that an accused violator of a protection order must be held in custody until a pre-trial bail assessment can be made, a person arrested for violation of a protection order will remain in custody accordingly, even if the accused would have otherwise been released on recognizance with a report date. Similarly, if the enforcing jurisdiction's code or policy requires that a victim who has a protection order be notified prior to the release of an assailant or within a specified time, the same notification mandate applies for any victim protected by another jurisdiction's order. Notification of a victim may pose significant logistical problems unless arresting officers identify a means for contacting the victim regarding release.

Even if the law in the enforcing jurisdiction does not protect the class of victim enumerated, include the categories of relief provided, or authorize the type of order issued, prosecutors must enforce valid orders from other jurisdictions.

Penalties or sanctions for violations of the order

Example: If it is a misdemeanor in the issuing jurisdiction to violate a protection order while menacing the protected party, but it constitutes a felony in the enforcing jurisdiction, then the defendant can be prosecuted for a felony in the enforcing jurisdiction.

ISSUANCE OF PROTECTION ORDERS IN CIVIL AND CRIMINAL COURTS

Crafting an Enforceable Order

For prosecutors who are involved in developing forms or seeking protection orders, information should be included on the face of the protection order that provides the enforcing jurisdiction with data critical to the prosecution of violations. A protection order first page, modeled after *Project Passport's* uniform first page, will increase the likelihood of enforcement in other jurisdictions.²

The text of the order should:

- Comply with VAWA's full faith and credit provision. The first page should state that the issuing court had jurisdiction over the parties and the subject matter, and that the respondent had notice and an

opportunity to be heard. If the order is issued ex parte, it should state that the respondent will be provided with an opportunity to be heard and include the hearing date. The first page should also include the following statement: “This protection order is enforceable in all fifty (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.”

- Cite the jurisdictional statute upon which the court’s decision and order are based.
- Provide the name, location, and telephone number of the issuing court and the telephone number of the protection order registry within that jurisdiction.
- State the duration of the order and its expiration date, if any.
- Include National Crime Information Center Protection Order File (NCIC POF) identifiers on the form and any other identifying information required by territorial, tribal, or state registries or databases.
- Provide notice of the federal domestic violence and stalking crimes, 18 U.S.C. §§ 2261, 2261A, 2262, and the federal firearm prohibitions, 18 U.S.C. § 922(g), (n). See “judicial notification” language on page 14.

It is critical that protection orders be legible and use clear, concise language (e.g., when crafting visitation provisions, be precise about times, location, persons, and duration).

Crafting State and Tribal Protection Orders to Facilitate Federal Firearm Prosecutions

Federal law prohibits possession of a firearm and ammunition while subject to a qualifying state, tribal, or territorial protection order. Protection order language should conform to the requirements of 18 U.S.C. § 922(g)(8). See page 32.

Facilitating Protection

The following are actions prosecutors can take to safeguard victims and provide notice that respondents will be held accountable in any jurisdiction in which they violate a protection order. These actions are not, however, a prerequisite for enforcement.

- Provide oral notice to the parties that the order is enforceable 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.

- Inform the parties that violation of the order and/or possession of a firearm may subject the respondent to prosecution for federal crimes in addition to any state, territorial, or tribal sanctions.
- Have the respondent, if present, sign an acknowledgment of service on the face of the order. Similarly, ask the process server to obtain the respondent's signature on any proof or acknowledgment of service.
- Provide the protected party with the number for the National Domestic Violence Hotline: 800-799-SAFE, TTY: 800-787-3224.
- Ensure that the victim is provided certified copies of the order and advise the victim to carry at least one copy at all times.
- Request that the court enter the protection order into its local registry and transmit the order to appropriate state and federal registries and databases.
- Suggest that a certified copy of the protection order be delivered to law enforcement agencies in jurisdictions where the victim lives, is employed, and any other jurisdiction where travel by the victim is anticipated.

ENFORCEMENT OF PROTECTION ORDERS ISSUED BY OTHER JURISDICTIONS

Victim Advocacy

It is important that victims be supported and informed throughout the enforcement process. Facilitate contact between the victim and a community-based advocate and/or a victim/witness specialist within your office to provide safety planning and advocacy throughout the enforcement process.

Prosecutors should be aware of the difficulties of enforcement when the victim is a member of a marginalized community. The elderly, persons with disabilities, women of color, immigrant women, and same-sex victims face greater obstacles and vulnerabilities. Culturally appropriate services can support victims in promoting their safety and consequently improve the likelihood of successful enforcement.

Service of Protection Orders

Service of civil protection orders can pose significant difficulties for law enforcement. Many respondents attempt to evade service of orders.

When charged with violation of an order, defendants may assert that they have not been personally served and that the order cannot be enforced against them. The prosecutor must then rebut this defense by showing evidence of proof of service or the defendant's constructive notice of the order.

Service must be effected pursuant to the issuing jurisdiction's laws. Service requirements vary by jurisdiction and may include any of the following options:

- Officers may effect service on defendants by:
 - Serving a certified order furnished by the victim;
 - Serving a copy faxed to the patrol vehicle; or
 - Reading the order to the respondent and advising the respondent to pick up a paper copy at a designated office of the prosecutor or court.
- Magistrates can serve defendants at arraignment.
- Prosecutors may serve an order at the defendant's first appearance.

To be eligible for certain Office on Violence Against Women (OVW) grants, federal law provides that victims may not be charged with any costs related to the protection order process, including the costs of service of a protection order both in the issuing and enforcing jurisdictions. See page 15 for more information.

Charging

- If the defendant has not been served with the protection order at the time of arrest for criminal conduct in the enforcing jurisdiction, charge the defendant with all appropriate crimes under your jurisdiction's criminal code.
- Charge the defendant with the same criminal offenses that apply to violations of orders issued within your jurisdiction. If the law of your jurisdiction restricts prosecutions to violations of orders from your jurisdiction only, contact your federal prosecutor to determine if there is a violation under federal law.
- Include an averment in the charging complaint demonstrating that the defendant was afforded due process (e.g., attach the order or an affidavit of service obtained from the issuing jurisdiction, if legally permissible in your jurisdiction).
- Charge the defendant with any other applicable crimes (e.g., stalking, trespass, harassment, firearm violations). These charges can sometimes be pursued instead of violations of the protection order, but be sure to avoid double jeopardy issues if you pursue multiple charges.
- Consider referring the case to federal prosecutors if federal statutes have been violated. See pages 35-39 for the federal domestic violence and stalking crimes statutes, and page 26 for information on coordinating with federal counterparts.
- Verification is not required under federal law. If the terms or status of the order are not clear, or if your jurisdiction requires it for prosecution, verify the conditions of the protection order by contacting the issuing

court or contacting the appropriate registry. Do not rely solely on the registries or NCIC POF, because these systems do not contain all of the orders in participating jurisdictions or orders from all jurisdictions.

If the state, tribal, or territorial registries or NCIC POF do not provide the necessary information, use traditional methods for verification, such as contacting law enforcement in the issuing jurisdiction. These steps may also be necessary for corroboration of the allegations sufficient to support your charging document or to defend against challenges to the validity of an order at trial.

Preliminary Arraignment/Bail Hearing

- Conduct a lethality/dangerousness assessment with the victim and, if permitted in your jurisdiction, provide information on the defendant's risk factors to substantiate the need for high bail or conditions of release. (See Lethality/Dangerousness Assessment on page 12.) Enhanced protection for victims can be achieved by a request for high bail.
- Check outstanding warrants and previous arrests, charges, convictions, probation violations, protection order violations, other domestic violence related offenses, and unexecuted sentences.
- After consulting with the victim, seek bail provisions or conditions of release that best protect the victim. Conditions that prohibit contact with the victim may be warranted. Contact should be defined to include contact from jail, phone calls, e-mail, voice mail, text messages, GPS tracking, spyware, and other emerging communication technologies, as well as contact through third parties. Some jurisdictions use electronic monitoring of protection order violators who regularly ignore "no-contact" provisions of protection orders. Conditions of release may also include exclusion from the home, surrender of the accused's passport and return of victim's and family member passports, payment of all spousal and child support and other legal obligations, surrender of all firearms and ammunition, prohibitions on possession of firearms, and directives precluding departure from the enforcing jurisdiction.
- Keep in mind that the defendant may present an increased flight risk because of his or her willingness to violate a protection order, particularly because the violation extended across jurisdictional lines and likely involved continued stalking of the victim. This conduct demonstrates a clear disregard for the mandates of the court that issued the protection order, and therefore the defendant may be likely to disregard the enforcing court's mandate to return at a future date and refrain from all unlawful acts.

Using Lethality/Dangerousness Assessments

The periods immediately after the victim leaves the relationship, after issuance of a protection order, and after a defendant is released from custody are often the most dangerous for victims. Additionally, abusers and stalkers who pursue victims across jurisdictional lines pose elevated risks of severe harm and lethal violence. In jurisdictions where elevated threat may be considered in bail decisions, prosecutors and victim/witness specialists should assess whether any of the following risk factors are present and include them in bail/bond and sentencing presentations:

- Separation of the parties;
- Threats of homicide or suicide;
- Possession of or access to weapons;
- Prior use, attempted use, or threatened use of weapons;
- Stalking behavior;
- Obsessive or desperate attachment to victim;
- Destruction of victim's property;
- History of domestic violence and violent criminal conduct;
- Significant drug or alcohol involvement;
- Depression or other mental illness;
- Abuse of children; and
- Abuse of animals.

While prosecutors should consider all of the above in evaluating the risks faced by domestic abuse victims, an abuser's threats with a weapon, threats to kill, use of a weapon, and access to or possession of firearms should be identified as particularly serious risk factors. As a result, prosecutors should be vigilant in enforcing state or jurisdictional firearm prohibitions.

Research confirms that the risk assessments made by victims are more accurate than those achieved through most assessment tools (whether based on clinical or actuarial information). Prosecutors should incorporate the assessments of survivors in deliberations related to risk assessment and threat management.

Pre-trial

Victims who have been stalked across jurisdictional lines and who have been targeted for continuing abuse may seek vigorous enforcement of the protection orders issued in their favor, yet be reluctant to testify. Reluctance may be based on safety concerns during the pendency of

prosecution, fear of escalated retaliation upon release or conviction, and worry that employers will terminate employment or landlords will evict. Prosecutors and victim/witness specialists should work to allay fears, provide essential safeguards, and gain victim support for prosecution.

Prosecutors should invite victim participation in pre-trial deliberations. Victims must be informed about sentencing guidelines and any collateral consequences that may attach upon a plea or conviction. Informed victims may be motivated to participate more fully in the trial and subsequent supervision of the defendant. Meaningful participation will produce better processes and outcomes for survivors.

Even with victim engagement in prosecution, *Crawford v. Washington*, 541 U.S. 36 (2004), and its progeny require more meticulous evidence collection from both the issuing and the enforcing jurisdictions. Trial preparation must be more extensive to produce admissible evidence.

Trial

Before offering proof of the protection order violation, present a *prima facie* case of the order's enforceability (i.e., the issuing court had jurisdiction over the parties and the subject matter and the defendant was provided with notice and an opportunity to be heard, or, in the case of an *ex parte* order, the defendant had notice of the order and a hearing was scheduled within a reasonable period of time). If the order does not recite these full faith and credit requirements adequately, or if your jurisdiction requires it:

- Obtain the necessary records from the issuing court, including affidavits of service and transcripts of the protection order proceeding. Your jurisdiction may require certified or authenticated copies of these documents.
- If proper service cannot be established, the issuing jurisdiction's statutes or case law may indicate that actual notice of the order's terms is sufficient. If so, determine whether the defendant acknowledged notice or service of the order. An acknowledgment may have been videotaped. Other statements of the defendant may demonstrate awareness of an order that mandated no contact with the victim. Consider offering the victim's testimony to verify that the defendant knew about the order and its provisions.

Sentencing

Advocate for sentences that promote victim safety and offender accountability by:

- Educating the court about the specific risk posed by a defendant and the protections necessary to safeguard against further violence. Use information obtained during the lethality/risk assessment;

- Informing the court of the defendant's prior crimes against the victim and others. Make sure to provide the court with information on all protection order violations that have occurred; and
- Permitting the victim to make an impact/risk statement and request specific protections and restitution during sentencing.

Post-Sentencing Follow-Up

- Inform the issuing court of the final disposition of the criminal enforcement proceeding.
- Notify the victim prior to the defendant's release from incarceration or upon suspension or completion of the sentence.
- Advise the victim of legal options within the jurisdiction for continuing protection from violence.
- Provide the victim with a copy of the order outlining the conditions of probation and contact information for the probation office.
- Discuss with the victim the enforcement requirements in jurisdictions where the victim frequently travels.

REQUIRED GRANT CERTIFICATIONS

Certification of Judicial Notification

VAWA requires that an applicant for STOP³ funds certify that local courts have policies and practices to provide notification to domestic violence offenders regarding federal, state, or local laws restricting firearm possession. The following is an example of language that will satisfy the requirement:

For civil or criminal protection orders:

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.

For criminal cases:

If you are 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, 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 these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.

The above language should be provided to criminal defendants charged with any crime against a person. Notice may be repeated at various stages of the criminal process.

Certification of Fee/Cost Waiver:

Protection orders and prosecution of domestic violence crimes

A state, Indian tribe, or unit of local government is not eligible for funds under the STOP and Community Defined Solutions⁴ grants unless it certifies that victims bear no costs associated with the filing of criminal charges against offenders, or the costs associated with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection order, or witness subpoena. The fee waiver must apply to all costs related to protection orders whether the order was issued inside or outside the enforcing state, tribe, or territory. *See* 42 U.S.C. §§ 3796gg-5(a)(1), 3796hh(c)(4).



FULL FAITH AND CREDIT FOR PROTECTION ORDERS

Crafting an Enforceable Order and Facilitating Protection

For prosecutors involved in developing forms or petitioning for protection orders, ensure that all orders:

- Reflect compliance with VAWA's full faith and credit provision. 18 U.S.C. § 2265.
- Cite the jurisdiction's statute upon which the court's decision and order are based.
- Clearly state the duration and expiration date of the order.
- Include all identifying information required for any state, tribal, or territorial registry and NCIC POE.
- Provide notice of the federal domestic violence and stalking crimes, 18 U.S.C. §§ 2261, 2261A, 2262, and at a minimum the federal firearm statutes. 18 U.S.C. § 922(g)(8)-(9).

Further facilitate protection for the victim by:

- Providing oral notice to the parties that the order is enforceable throughout the states, tribes, and territories;
- Informing the parties that violation of the order and/or possession of a firearm may subject the respondent to state and/or federal prosecution;
- Expediting service of protection orders on respondents and having a respondent sign an acknowledgment of service on the proof of service or sign the order;
- Ensuring that victims have certified copies of the order and advising that they carry a copy of the order at all times; and
- Providing the victim with detailed information on enforcement procedures and suggesting that the victim deliver a copy of the order to law enforcement agencies in jurisdictions where the victim lives, works, or anticipates visiting.

Enforcing a Protection Order Issued in Another Jurisdiction

Pursuant to the federal full faith and credit provision of VAWA, for a protection order to be enforceable in a jurisdiction other than where it was issued, it must meet the following conditions:

- The court that issued the order had personal and subject matter jurisdiction. 18 U.S.C. § 2265(b)(1).
- The respondent had notice and an opportunity to be heard sufficient to protect that person's right to due process. 18 U.S.C. § 2265(b)(2).

- In the case of ex parte orders, notice and an opportunity to be heard were provided to the respondent within the time required by the issuing jurisdiction's law, or in any event, within a reasonable period of time. 18 U.S.C. § 2265(b)(2).

The federal statute also provides the following:

- Orders issued against both parties are not enforceable against the petitioner unless the respondent filed a cross- or counter-petition for a protection order, and the judge made specific findings that each party was entitled to such protection.
- Protection orders must be enforced regardless of the victim's compliance with the enforcing jurisdiction's registration or filing requirements.
- Notice may not be sent to the respondent upon registration or filing of a protection order issued in another jurisdiction unless requested by the petitioner.
- A state, tribe, or territory may not make publicly available on the Internet the filing, issuance, or registration of a protection order if the publication would likely reveal the identity or location of the party protected under such an order.
- Indian tribal courts have jurisdiction to use their civil powers to enforce protection orders against non-Indians through civil contempt, exclusion, or other means. Tribal courts have jurisdiction to enforce protection orders against Indians through misdemeanor criminal process, civil contempt, exclusion, or other means.

Charging Decisions

- Charge the defendant who has violated an order issued by another jurisdiction with the same criminal offenses that apply to violations of orders issued within your jurisdiction.
- Include an averment in the charging complaint that the defendant was afforded due process.
- Charge the defendant with any other crimes, including violations of state or local firearm prohibitions, if applicable.
- Consider referring the case to federal prosecutors or the Bureau of Alcohol, Tobacco, Firearms and Explosives agents if federal statutes have been violated, such as the federal domestic violence and stalking crimes, 18 U.S.C. §§ 2261, 2261A, 2262, or the federal firearm statutes, 18 U.S.C. § 922(g), (n). (See pages 32-39 of this guide for more information on these crimes.) For further information on the federal statutes, contact the National Center on Protection Orders and Full Faith & Credit (NCPOFFC).

- Verification is not required under federal law; however, if the terms or status of the order are not clear, or if your jurisdiction requires it at this stage, verify the terms or status of a protection order by accessing the appropriate state, tribal, or territorial registry or NCIC POF, or by contacting law enforcement or the clerk of court in the issuing jurisdiction.

Preliminary Arraignment/Bail Hearing

- Provide the judicial officer with information about risk factors identified by lethality/dangerousness assessment to substantiate the need for high bail. See page 12.
- Consider arguing that the defendant poses an increased flight risk because of the defendant's willingness to violate the issuing court's protection order, especially because the violation extended across jurisdictional lines. Ask for the surrender of the defendant's passport and the release of family members' passports in the defendant's possession.
- Inform the court that access to, or possession of, firearms by the defendant charged with crimes of domestic violence or stalking substantially increases the risk of severe bodily injury or homicide to the victim. Assert that court-imposed conditions of release should be tailored accordingly.
- Check for warrants, arrests, charges, convictions, and unexecuted sentences in your jurisdiction, the issuing jurisdiction, and all other jurisdictions.
- After consulting with the victim, seek provisions in bail or conditions of release that prohibit contact with the victim, leaving the jurisdiction, and possession of firearms.

Trial Preparation

Prepare to present a prima facie case of the order's enforceability. If the face of the order does not adequately recite the full faith and credit requirements, or if your jurisdiction requires:

- Obtain the necessary records from the issuing court, including affidavits of service and transcripts of the protection order proceeding.
- Even if proper service cannot be established, consider having the victim testify that the defendant knew about the order and its provisions.

Consult with the victim throughout preparation, providing information and seeking input.

Sentencing

Advocate for sentences that promote victim safety and offender accountability by:

- Providing information to the court about the specific risks the defendant poses and the kinds of safeguards and resources that are necessary;
- Informing the court of the defendant's criminal history; and
- Permitting the victim to make an impact or risk statement and request specific protections and restitution.

Post-Sentencing Follow-Up

- Inform the issuing court of the final disposition.
- Notify the victim prior to the defendant's release and completion of the sentence.
- Provide the victim with a copy of the order outlining the conditions of release.
- Discuss with the victim the enforcement requirements in jurisdictions where the victim plans to relocate or travel.

[End of Quick Reference Guide]

TRIBAL PROTECTION ORDERS AND INDIAN COUNTRY⁵: ISSUES FOR STATE PROSECUTORS

Tribal courts have civil jurisdiction to issue protection orders against both Indian and non-Indian respondents. These orders may be enforced through civil contempt proceedings, other civil processes, exclusion from tribal land, and other appropriate mechanisms. See 18 U.S.C. § 2265(e). Tribal courts also have authority to issue criminal protection orders against Indian defendants. Note: While all federally recognized tribes have the authority to operate a court and issue protection orders, not all tribal governments do so at this time.

The full faith and credit provision of VAWA applies to orders issued by tribal courts. State courts are required to recognize and enforce protection orders issued by tribal courts in the same way they would enforce their own orders or orders from another state. This requirement applies whether or not the issuing tribe is within the enforcing jurisdiction.

In addition, some state courts and tribes share concurrent jurisdiction over civil and criminal matters that arise in Indian Country. If a protection order was violated in Indian Country that is subject to Public Law 280 (or another federal law that confers jurisdiction on the state), the state shares concurrent criminal jurisdiction if the offense constitutes a crime under state law.

Tips for Prosecutors:

- Determine whether or not your state shares concurrent jurisdiction with the tribes in your state. Public Law 280 is not the only federal statute that confers jurisdiction on states. In addition, some tribes are exempt from state jurisdiction even in Public Law 280 states (such as Red Lake and Bois Forte in Minnesota).
- If both the victim and the offender are non-Indian, state courts have jurisdiction over offenses that constitute a violation of state law, regardless of Public Law 280 or other federal statute conferring state jurisdiction.
- Familiarize yourself with the tribal codes and courts in your region. Tribal laws may be more or less inclusive than state laws. Remember that the issuing jurisdiction determines who is protected, the terms and conditions of the order, and the length of the order.
- Acquaint yourself with law enforcement policies in Indian Country. While Indian tribes do not have criminal jurisdiction over non-Indians, tribal law enforcement officers generally have the authority to detain non-Indian offenders and transport them to state or federal authorities for criminal prosecution. In addition, state and tribal law enforcement officers may be cross-deputized to enforce both state and tribal laws.
- A referral to the U.S. Attorney's Office should always be made for possible prosecution of one or more of the federal domestic violence crimes, federal firearm offenses, or other federal crimes. Note that entering or leaving Indian Country is an element in several federal laws.

Tribal Prosecutors and Full Faith and Credit

The full faith and credit provision of VAWA requires that tribal courts recognize and enforce protection orders issued by states, territories, and other tribal courts. Tribal codes may contain provisions according full faith and credit to orders issued in other jurisdictions. However, tribal court enforcement of protection orders issued by a state, territory, or another tribal court may implicate tribal sovereignty issues.

Tribal court criminal jurisdiction is shared with either the state or federal government (depending on the state and the tribe). (See the “Criminal Jurisdiction in Indian Country” chart, page 23.)

Communication across jurisdictional lines is critical. Victim safety is enhanced when tribal prosecutors and state or federal prosecutors coordinate their efforts.

When a protection order is violated in Indian Country, a tribal prosecutor must analyze various issues, including the status of the victim, the status of the offender, and the offense committed, to determine how to proceed. This analysis applies regardless of where the protection order originated.

Tribal court criminal jurisdiction is limited to Indian defendants. If the defendant is a non-Indian:

- Refer the case to the appropriate state or federal prosecutors for criminal action; and
- Consider asking the tribal court to exercise its civil powers by holding the offender in contempt, excluding the offender from tribal land, or utilizing other appropriate mechanisms within the authority of the tribe. See 18 U.S.C. § 2265(e). To determine whether the tribe has civil authority to enforce a foreign protection order, see page 22.

For model tribal code provisions addressing prosecution for violations of protection orders issued by other jurisdictions, contact NCPOFFC, the Southwest Center for Law and Policy, or the Tribal Law and Policy Institute. See contact information listed in the Resources section of this guide.

The following charts provide an overview of the authority of tribes, states, and the federal government to prosecute for offenses occurring on tribal land. Pertinent portions of the statutes cited in the charts are provided below.



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

Criminal Jurisdiction In Indian Country*

Crimes Committed By Indian** Perpetrator

**Major Crimes Act
Crimes (18 U.S.C.
§ 1153) and DV by
Perpetrators With 2 Or
More DV Convictions**

Other Crimes
(domestic violence,
protection order violations,
etc.)

**Tribes Subject To
Mandatory
Public Law 280
(18 U.S.C. § 1162)**

Indian Victim
= Tribal/Federal
(Concurrent)

Indian Victim
= Tribal (Exclusive)

Indian Victim
= Tribal/State***
(Concurrent)

Non-Indian Victim
= Tribal/Federal
(Concurrent)

Non-Indian Victim
= Tribal/Federal
(Concurrent)

**Non-Indian
Victim**
= Tribal/State***
(Concurrent)

Crimes Committed By Non-Indian Perpetrator

Indian Victim
Federal (Exclusive)

**PL280 Jurisdictions =
State*****

Non-Indian Victim
State (Exclusive)

***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.

**General Crimes Act (sometimes called the Indian Country Crimes Act).
18 U.S.C. § 1152. Laws governing.**

“Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country. This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.”

Major Crimes Act. U.S.C. 18 U.S.C. § 1153. Offenses committed within Indian country.

“(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States. (b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.”

Assimilative Crimes Act. U.S.C. 18 U.S.C. § 13. Laws of states adopted for areas within federal jurisdiction.

“(a) Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force and at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.”

Full Faith and Credit and the Military

In 2002, the Armed Forces Domestic Security Act, 10 U.S.C. § 1561a, was enacted to afford civilian orders of protection the “same force and effect on a military installation as such order has within the jurisdiction of the (state, tribal, or territorial) court that issued such order.” The Secretary of Defense has drafted regulations to guide implementation of the law. *See* U.S. DEP’T OF DEFENSE INSTR. 6400.06, DOMESTIC ABUSE INVOLVING DoD MILITARY AND CERTAIN CIVILIAN AFFILIATED PERSONNEL (21 Aug. 2007).

State, tribal, or territorial courts might seek a memorandum of understanding with any nearby military installation, incorporating explicit reference to the practices of command staff, the military police, prosecutors, and judge advocates with respect to information exchange, investigation, and prosecution in domestic abuse cases involving active duty military personnel and their family members. *See id.* at Enclosure 5.

Protection orders issued by the military are not entitled to full faith and credit in civilian courts. Generally, they are issued by a commanding officer without providing the service member due process.

COORDINATION: THE FOUNDATION FOR EFFECTIVE ENFORCEMENT OF PROTECTION ORDERS

State and tribal prosecutors cannot ensure that protection orders, whether issued within their jurisdictions or elsewhere, will protect victims of domestic violence or that violators will be appropriately sanctioned. Law enforcement personnel, victim/witness specialists, community-based victim advocates, attorneys, probation and parole officers, court personnel, and federal prosecutors all have critical roles to play. State, tribal, and territorial prosecutors must work closely with these individuals to safeguard victims against further violence and ensure that the system holds offenders accountable.

Law Enforcement

Prosecutors should work with law enforcement to establish uniform policies and procedures on the response to violations of protection orders issued within and outside their jurisdiction. Prosecutors should play a role in training law enforcement on their responsibilities under the policies and procedures, including:

- Responding properly at the scene of a domestic violence incident;
- Assessing whether a protection order is valid on its face;

- Verifying the status or terms of an order, when necessary;
- Collecting evidence of the violation and other criminal conduct; and
- Referring cases for potential federal prosecution.

Victim/Witness Specialists

Prosecutors should assign victim/witness specialists to provide support and guidance to victims throughout the criminal justice process, including:

- Assisting in safety planning and lethality/dangerousness assessments;
- Informing the victim that the protection order is entitled to enforcement in every jurisdiction throughout the United States;
- Providing information on enforcement procedures in the jurisdiction where an order was violated and any other jurisdiction where the victim plans to be;
- Assisting in obtaining certified copies of orders from the issuing jurisdiction to enable the victim to enlist support for enforcement in any jurisdiction and to confirm validity of orders in violation proceedings; and
- Providing referrals to community-based victim services and legal services.

Community-Based Victim Advocates

Prosecutors should encourage victims to work with advocates from community-based victim service programs for assistance throughout civil and criminal proceedings and to address other legal and resource needs related to the violence (e.g., divorce, custody, child care, housing, and employment). It is also helpful for prosecutors to participate in meetings or cross-trainings with advocates about criminal procedures for protection order violations and methods of cooperation between advocates and prosecutors to promote the accountability of offenders and the safety and autonomy of victims.

Federal Prosecutors

Conduct that gives rise to cross-jurisdictional enforcement of protection orders may also support prosecution under federal law. State, tribal, and territorial prosecutors should be knowledgeable about federal domestic violence, stalking, and firearm crimes and work with U.S. Attorney's offices to develop protocols for referral and triage of appropriate cases and to provide support to federal prosecution.

Judges and Other Court Personnel

Prosecutors should inform judges and other court personnel about:

- The federal full faith and credit provision;

- Related state, tribal, or territorial code provisions;
- The importance of enforcing protection orders from other jurisdictions;
- The federal firearm prohibitions in 18 U.S.C. § 922(g), (n), and the requirements for judicial notification to defendants/respondents; and
- VAWA provisions that preclude charging fees or costs associated with protection orders. *See* 42 U.S.C. §§ 3796gg-5(a)(1), 3796hh(c)(4).

Prosecutors should work with court administrators to develop standardized protection order forms that:

- Incorporate a first page similar to the *Project Passport* template to facilitate full faith and credit of protection orders;
- Indicate compliance with full faith and credit requirements;
- Provide notice to the parties that the order is enforceable in all other jurisdictions;
- State that interstate violation of the order may subject the defendant/respondent to federal prosecution; and
- Provide notice of federal, state, and local firearm prohibitions and crimes.

Protection Order Registries

Prosecutors should coordinate with clerks of the court, law enforcement, and others involved in filing, registration, or retrieval of protection orders to increase the accuracy of the jurisdiction's registry information and to enhance delivery of protection order content to state or federal databases.

Prosecutors should confirm that:

- There are laws, court rules, and law enforcement procedures that require timely entry of all protection orders into local, state, tribal, or territorial protection order registries⁶, and NCIC POF;
- There are quality control mechanisms in place to check for missing data prior to entry into a registry and/or NCIC POF (e.g., a numeric identifier for the respondent such as date of birth or Social Security number);
- Victim and other protected parties' data (e.g., residential and employment addresses) remain confidential pursuant to state, tribal, territorial, or federal law;
- There are mechanisms in place that provide for a timely response to verification requests by other jurisdictions; and
- The state, tribal, or territorial registry accommodates the entry of protection orders issued in other jurisdictions, including orders containing relief that is not available in the entering jurisdiction.

FULL FAITH AND CREDIT PROVISION OF THE VIOLENCE AGAINST WOMEN ACT 18 U.S.C. § 2265 AND DEFINITIONS 18 U.S.C. § 2266

§ 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, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State or tribe.
- (b) **PROTECTION ORDER.** A protection order issued by a State, tribal, or territorial court is consistent with this subsection if—

 - (1) such court has jurisdiction over the parties and matter under the law of such state, Indian tribe, or territory; 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, 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.
- (c) **CROSS OR COUNTER PETITION.** A protection order issued by a State, tribal, or territorial 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, 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.

(d) NOTIFICATION AND REGISTRATION.

- (1) NOTIFICATION.** A State, Indian tribe, or territory according full faith and credit to an order by a court of another State, Indian tribe, or territory shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State, tribal, or territorial jurisdiction unless requested to do so by the party protected under such order.
- (2) NO PRIOR REGISTRATION OR FILING AS PREREQUISITE FOR ENFORCEMENT.** Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.
- (3) LIMITS ON INTERNET PUBLICATION OF REGISTRATION INFORMATION.** A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

- (e) TRIBAL COURT JURISDICTION.** For purposes of this section, a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.

§ 2266. DEFINITIONS [This section applies to sections 2265, 2261, 2261A, and 2262.]

In this chapter:

- (1) **BODILY INJURY.** The term “bodily injury” means any act, except one done in self-defense, that results in physical injury or sexual abuse.
- (2) **COURSE OF CONDUCT.** The term “course of conduct” means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose.
- (3) **ENTER OR LEAVE INDIAN COUNTRY.** The term “enter or leave Indian country” includes leaving the jurisdiction of 1 tribal government and entering the jurisdiction of another tribal government.
- (4) **INDIAN COUNTRY.** The term “Indian country” has the meaning stated in section 1151 of this title.
- (5) **PROTECTION ORDER.** The term “protection order” includes –
 - (A) any injunction, restraining order, or any other order issued by a civil or criminal court 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 temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and
 - (B) 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.
- (6) **SERIOUS BODILY INJURY.** The term “serious bodily injury” has the meaning stated in section 2119(2).
- (7) **SPOUSE OR INTIMATE PARTNER.** The term “spouse or intimate partner” includes—

- (A) for purposes of—
 - (i) sections other than 2261A—
 - (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; and
 - (ii) section 2261A—
 - (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, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.
 - (B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.
- (8) **STATE.** The term “State” includes a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States.
- (9) **TRAVEL IN INTERSTATE OR FOREIGN COMMERCE.** The term “travel in interstate or foreign commerce” does not include travel from 1 State to another by an individual who is a member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member.

(10) DATING PARTNER. The term “dating partner” refers to a 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) the type of the relationship; and
- (C) the frequency of interaction between the persons involved in the relationship.

FEDERAL FIREARM PROHIBITIONS 18 U.S.C. § 922(g) AND § 921(a)(33)

§ 922 (g). it shall be unlawful for any person—

- (1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
- (2) who is a fugitive from justice;
- (3) who is an unlawful user of or addicted to any controlled substance (as defined by section 102 of the Controlled Substances Act (21 U.S.C. 802));
- (4) who has been adjudicated as a mental defective or who has been committed to a mental institution;
- (5) who, being an alien—
 - A. is illegally or unlawfully in the United States; or
 - B. except as provided in subsection (y)(2), has been admitted to the United States under a nonimmigration visa (as that term is defined in section 101(a)(26) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(26)));
- (6) who has been discharged from the Armed Forces under dishonorable conditions;
- (7) who, having been a citizen of the United States, has renounced his citizenship;
- (8) who is subject to a court order that—
 - A. was issued after a hearing of which the person received actual notice, and at which such person had an opportunity to participate;
 - B. restrains such person 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 an

- intimate partner in reasonable fear of bodily injury to the partner or child; and
- C. (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or
- (ii) by its terms explicitly prohibits 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; or
- (9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

§ 921 Definitions

(a)(33)(A) Except as provided in subparagraph (c), the term “misdemeanor crime of domestic violence” means an offense that—

- (i) is a misdemeanor under Federal, State, or Tribal law; and
- (ii) has, as an element the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

Special Considerations for 18 U.S.C. § 922(g)(9)

Prosecutors should clearly identify the relationship of the victim and the defendant and ensure that the relationship element is included in the court records of the proceedings.

The final court records of the criminal proceedings should reflect information demonstrating that the offense was committed by the use or attempted use of physical force or the threatened use of a deadly weapon.

1. These records may include but are not limited to the record of conviction, plea agreement, or sentencing order. *See Shepard v. United States*, 544 U.S. 13 (2005).
2. This is particularly important where the offense in the criminal code is constructed in the disjunctive (e.g., separate subsections) or contains multiple clauses (e.g., lists a series of behaviors). In such cases, the court records must specify the exact subsection, clause, or phrase the person was convicted of. For additional information on charging, pleas, and making the record, see www.atf.gov/firearms/domestic/112807mcdv_brochure.pdf.

Relationship Requirement

Qualifying relationships for purposes of § 922(g)(8) are governed by both the definition of an “intimate partner” of the defendant or respondent (e.g., a spouse, cohabitant, child), and the substantive terms of § 922(g)(8) (e.g., child of the intimate partner). See 18 U.S.C. § 921(a)(32).

Examples of qualifying relationships include ones in which the protected person is a:

- Spouse or former spouse of the defendant or respondent;
- A child of the defendant or respondent, a child of the intimate partner, or a child in common of the defendant or respondent and the intimate partner (including where parental rights have been terminated);
- A person with whom the defendant or respondent has or had a child in common;
- A person who cohabitates or who has cohabitated with the defendant or respondent.

For § 922(g)(8), qualifying relationships do not include:

- Boyfriends or girlfriends who do not cohabitate or have not cohabitated;
- Elder abuse—other than in an intimate partner relationship;
- Brothers who abuse sisters, uncles who abuse nieces, grandfathers who abuse granddaughters, etc.; and
- Roommates, neighbors, or strangers.

The relationship requirement for § 922(g)(9) is different than that for § 922(g)(8). To trigger the firearm prohibition, at the time the offense was committed the defendant must be:

- A current or former spouse, parent, or guardian of the victim;
- A person with whom the victim shares or shared a child in common;
- A person who was cohabiting or had cohabited with the victim as spouse, parent, or guardian; or,
- A person who was or who had been similarly situated to a spouse, parent, or guardian of the victim.

Official Use Exemption

The federal law creates an exemption for certain government employees required to carry firearms while on duty. 18 U.S.C. § 925(a)(1). This provision, often called the “official use exemption,” only allows for the use of duty weapons while on duty. The possession or use of personal firearms, hunting weapons, or ammunition continue to be prohibited under 18 U.S.C. § 922(g)(8). The prohibition ends upon the dismissal or expiration of the qualifying protection order.

Some states have enacted laws that are stricter than the federal law. Many agency policies have the same strict language. In those jurisdictions government employees are not allowed to possess their duty weapons even though federal law would allow for such possession. There is no official use exemption for 18 U.S.C. § 922(g)(9).

FEDERAL DOMESTIC VIOLENCE CRIMES **18 U.S.C. §§ 2261 – 2262, 2265A, 117**

§ 2261. INTERSTATE DOMESTIC VIOLENCE

(a) Offenses.

(1) Travel or Conduct of Offender. A person who travels in interstate or foreign commerce or enters or leaves Indian country or 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 who, in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that spouse, intimate partner or dating partner, shall be punished as provided in subsection (b).

(2) Causing Travel of Victim. A person who causes 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 who, 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 spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(b) Penalties. A person who violates this section or section 2261A shall be fined under this title, imprisoned—

- (1) for life or any term of years, if death of the victim results;
- (2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;
- (3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

- (4) as provided for the applicable conduct under chapter 109A (18 U.S.C. §§ 2241 et seq.) if the offense would constitute an offense under chapter 109A (18 U.S.C. §§ 2241 et seq.) (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and
- (5) for not more than 5 years, in any other case, or both fined and imprisoned.
- (6) Whoever commits the crime of stalking in violation of a temporary or permanent civil or criminal injunction, restraining order, no-contact order, or other order described in section 2266 of title 18, United States Code, shall be punished by imprisonment for not less than 1 year.

§ 2261A. INTERSTATE STALKING

Whoever—

- (1) travels in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, or causes substantial emotional distress to that person, a member of the immediate family (as defined in section 115) of that person, or the spouse or intimate partner of that person; or
- (2) with the intent—
- (A) to kill, injure, harass or place under surveillance with intent to kill, injure, harass or intimidate, or cause substantial emotional distress to a person in another State or tribal jurisdiction or within the special maritime and territorial jurisdiction of the United States; or
 - (B) to place a person in another State or tribal jurisdiction, or within the special maritime and territorial jurisdiction of the United States, in reasonable fear of the death of, or serious bodily injury to—
 - (i) that person;
 - (ii) a member of the immediate family (as defined in section 115) of that person; or
 - (iii) a spouse or intimate partner of that person; uses the mail, any interactive computer service, or any facility of interstate or foreign commerce to engage in a course of

conduct that causes substantial emotional distress to that person or places that person in reasonable fear of the death of, or serious bodily injury to, any of the persons described in clauses (i) through (iii) of subparagraph (B); shall be punished as provided in section 2261(b) of this title.

§ 2262. INTERSTATE VIOLATION OF PROTECTION ORDER

(a) Offenses.

(1) Travel or conduct of offender. A person who travels in interstate or foreign commerce, or enters or leaves Indian country or within the special maritime and territorial jurisdiction of the United States,

with the 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 jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

(2) Causing travel of victim. A person who causes another person 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 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 jurisdiction in which the order was issued, shall be punished as provided in subsection (b).



(b) Penalties.

A person who violates this section shall be fined under this title, imprisoned—

- (1) for life or any term of years, if death of the victim results;
- (2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;
- (3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;
- (4) as provided for the applicable conduct under chapter 109A (18 U.S.C. §§ 2241 et seq.) if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and
- (5) for not more than five years, in any other case, or both fined and imprisoned.

§ 2265A. REPEAT OFFENDERS

(a) Maximum Term of Imprisonment. The maximum term of imprisonment for a violation of this chapter after a prior domestic violence or stalking offense shall be twice the term otherwise provided under this chapter.

(b) Definition. For purposes of this section—

- (1) the term “prior domestic violence or stalking offense” means a conviction for an offense—
 - (A) under section 2261, 2261A, or 2262 of this chapter; or
 - (B) under State law for an offense consisting of conduct that would have been an offense under a section referred to in subparagraph (A) if the conduct had occurred within the special maritime and territorial jurisdiction of the United States, or in interstate or foreign commerce; and
- (2) the term “State” means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

18 U.S.C. § 117. DOMESTIC ASSAULT BY AN HABITUAL OFFENDER

(a) **In general.** Any person who commits a domestic assault within the special maritime and territorial jurisdiction of the United States or Indian country and who has a final conviction on at least 2 separate prior occasions in Federal, State, or Indian tribal court proceedings for offenses that would be, if subject to federal jurisdiction—

(1) any assault, sexual abuse or serious violence felony against a spouse or intimate partner; or

(2) an offense under chapter 110A shall be fined under this title, imprisoned for a term of not more than 5 years, or both, except that if substantial bodily injury results from violation under this section, the offender shall be imprisoned for a term of not more than 10 years.

(b) **Domestic assault defined.** In this section, the term “domestic assault” means an assault committed by a current or former spouse, parent, child or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, parent, child, or guardian, or by a person similarly situated to a spouse, parent, child or guardian of the victim.



END NOTES

[1] Throughout this guide “jurisdiction” is used in place of state, tribe, or territory.

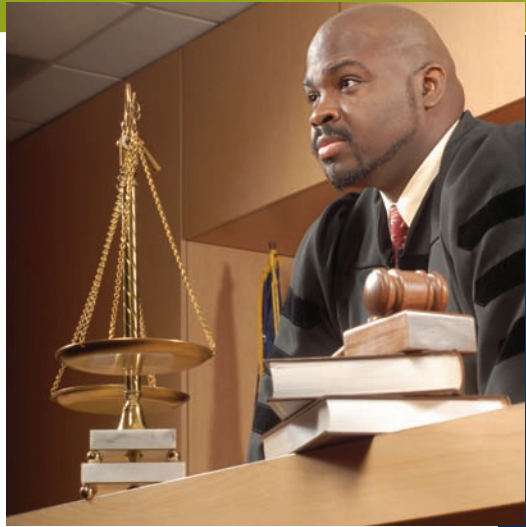
[2] Project Passport was designed to improve recognition and enforcement of protection orders within and between jurisdictions by encouraging them to adopt a recognizable first page for protection orders (i.e., by including common elements and format). Using a recognizable first page for protection orders 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. More than 30 states have adopted the template 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.

[3] 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 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).

[4] 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).



[5] Indian Country is defined 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 §1151.

[6] Databases containing pre-trial conditions on release, victim notification information, sentences imposed, probation or parole conditions, civil protection orders, and other injunctions or restraining orders are all registries of a local jurisdiction in which the contents of protection orders must be input in a timely fashion after issuance.



TECHNICAL ASSISTANCE ON FULL FAITH AND CREDIT IMPLEMENTATION AND OTHER DOMESTIC VIOLENCE AND STALKING RESOURCES

Full Faith and Credit and Federal Firearm Laws

National Center on Protection Orders and Full Faith & Credit
800-903-0111, prompt 2; 703-312-7922
www.fullfaithandcredit.org

Domestic Violence and the Civil and Criminal Legal Systems

Battered Women's Justice Project
800-903-0111, prompt 1; 612-824-8768
www.bwjp.org

Project Passport

National Center for State Courts
Contact person: Denise Dancy
800-616-6164; 757-259-1593
www.ncsc.org

Prosecution Issues

National District Attorney's Association
American Prosecutors Research Institute
703-549-9222
www.ndaa.org/apri

Police Policy and Practice

International Association of Chiefs of Police
800-THE-IACP or 800-843-4227
www.iacp.org

Stalking Issues

National Center for Victims of Crime
Stalking Resource Center
800-FYI-CALL or 800-394-2255; 202-467-8700
www.ncvc.org/src

Military Issues

Battered Women's Justice Project
800-903-0111, prompt 1
www.bwjp.org

Federal Firearms

Bureau of Alcohol, Tobacco, Firearms and Explosives
800-ATF-GUNS or 800-283-4867
www.atf.gov

Custody and Child Welfare Issues

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

Tribal Law and Practice

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

Tribal Law and Policy Institute
651-644-1125
www.tribalprotectionorder.org

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

National Hotline Assistance for Victims of Domestic Violence

National Domestic Violence Hotline
800-799-SAFE, 512-455-8117
TTY: 800-787-3224
(24 hours, for referral to state and local programs)
www.ndvh.org

National Teen Dating Abuse Helpline

Love is Respect
866-331-9474; TTY 866-331-8453
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



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

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