

FULL FAITH AND CREDIT IN INDIAN COUNTRY

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- National Comprehensive Technical Assistance Provider
- Topic areas are issuance and enforcement of POs, full faith and credit, federal and local firearm laws as they relate to domestic violence.

This Workshop...

- This workshop will provide information on the Violence Against Women Act's Full Faith and Credit provision and how it applies to tribes and tribal protection orders. We will cover issuance and enforcement of different kinds of protection orders, common challenges, and best practices.

Violence Against Native Women

- Native women suffer the highest rates of domestic violence, stalking, and sexual assault of any population in the United States. American Indians and Crime: A BJS Statistical Profile, 1992 – 2002.
- The majority of these crimes are committed by non-Native perpetrators. There is a trend in thinking that there is a higher rate of reporting for non-native perpetrators and that the rate of native on native crime may be higher than reported.
- This rate is almost twice the national average.

Protection Order? What's that?

A “stay away” order issued by a tribal or state government.

The order restricts the contact between a petitioner and a respondent.

What do these look like for you?

Protection Orders Vary

- Anti-harassment
 - No relationship
 - Evidence that the respondent has repeatedly harassed, intimidated, threatened, annoyed or abused the petitioner
- Domestic Violence or Dating Violence
 - Relationship
 - Evidence that the respondent has committed or may commit an act of violence
- Sexual Violence
 - No relationship requirement
 - Can be a single incident
- Vulnerable Adult/Elder Abuse
- Stalking

What do protection orders look like?

- Boiler plate form
- In an electronic database
- Hand written
- Contained in another form
- Oral

Tribal Protection Orders

- Tribal courts have the ability to issue protection orders. These orders can restrict the conduct of Native and non-Native respondents.
- Tribal Protection Orders may have provisions that are not contained in state issued civil protection orders.

What is full faith and credit, generally?

- A Constitutional concept, stating that the acts, records and decrees of one state will be honored in all other states.
- Tribes don't always have full faith and credit laws, this concept may be effected through the law of comity.
- The Constitution does not contain a statement on protection orders.

Full Faith and Credit

Constitutional principle

- Full and Credit *shall* be given in each state to the public acts, records, and judicial proceedings of every other state. U.S. Constitution, Article IV, Section 1.

Examples:

- Driving License
- Marriage License
- Divorce Decree
- Birth Certificate

Historical Enforcement Dilemmas

- Constitutional principles didn't encompass protection orders, thus:
- Enforcement of protection orders was inconsistent, and in some cases, non-existent.

Full Faith and Credit for Protection Orders

- Violence Against Women Act of 1994, amended in 2000 and 2006
- Full Faith and Credit Provision
 - ▣ Any protection order
 - ▣ Includes *Indian tribes*
- Currently up for reauthorization

Full Faith and Credit for Protection Orders

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 territory.

18 U.S.C. § 2265.

What That Means:

Full faith and credit for protection orders means that when a protection order issued by any State, Indian tribe, or territory is violated in any other jurisdiction, it must be enforced as if the order had been issued in that jurisdiction.

VAWA Definition of Protection Order

- 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;
- 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 (a), (b).

Full Faith and Credit Requires:

- **Jurisdiction** 18 U.S.C. §2265(b).
 - Parties
 - Subject Matter
- **Due Process** 18 U.S.C. §2265(b).
 - Notice
 - Opportunity to be heard

Civil Jurisdiction In Protection Orders:
Personal Jurisdiction

Tribal court may exercise **personal jurisdiction** over the defendant if:

a.) the defendant has “**minimum contacts**” with the tribe (e.g. committed dv on tribal lands, is present on tribal lands, is doing business on tribal lands, etc.) **or**

Personal Jurisdiction, cont'd.

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.) voluntarily appearing before the tribal court **or**

2.) filing a motion, response, answer, or pleading in tribal court

Civil Jurisdiction In Protection Orders:
Subject Matter Jurisdiction

Tribal court must also have subject matter jurisdiction

1. **DV** giving rise to the protection order (or the violation of the protection order issued by the tribal court or another court) **occurred within the territorial jurisdiction of the tribal court and the defendant is either:**
 - a.) **a member of the tribe or eligible for membership with that tribe or**

Civil Jurisdiction In Protection Orders:
Subject Matter Jurisdiction, cont'd.

b.) a member of another tribe or is a non-Indian and

- 1) the defendant had 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, employed by tribe, etc.) **or**
- 2) the alleged conduct or violation threatens or has some **direct effect on the political integrity, the economic security, or the health or welfare of the tribe**

VAWA Requires that:

- Custody, visitation and support provisions in protection orders *must* receive full faith and credit. 18 U.S.C. §2266(b).
- All “injunctive” court orders, so long as the purpose of the order is to provide safety and protection for survivors of violence, will be afforded Full Faith and Credit. 18 U.S.C. §2266(a).
- Courts cannot publish information about survivors on the internet. 18 U.S.C. §2265(d)(3).

Full Faith and Credit Prohibits Requiring:

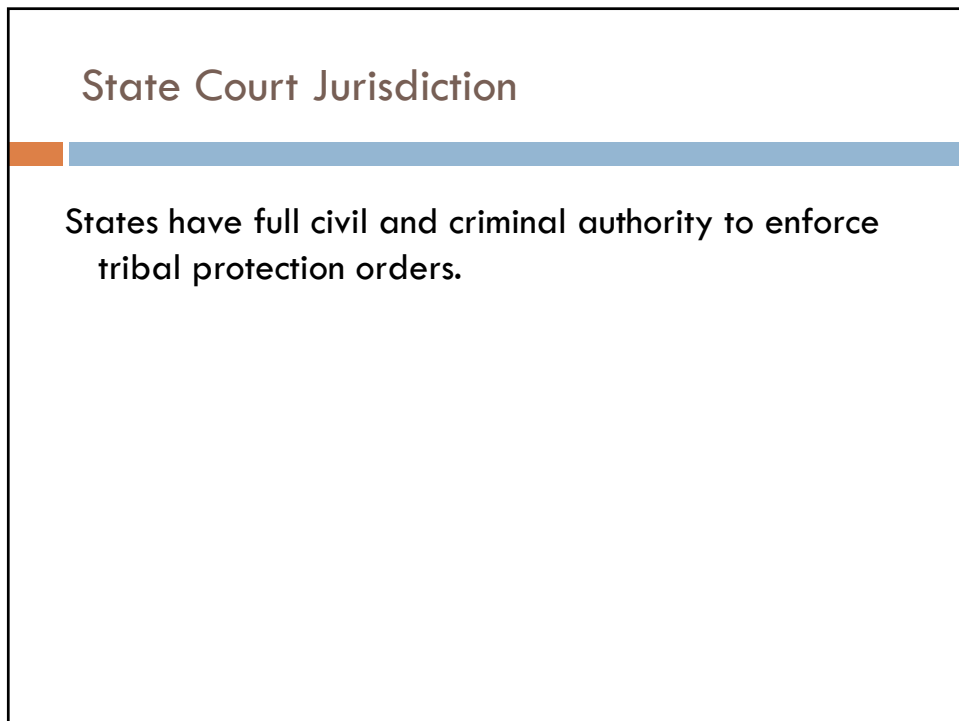
- Prior registration or filing as prerequisite for enforcement. 18 U.S.C. §2265(d).
 - Any protection order that is otherwise consistent with Full Faith and Credit provisions shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.
- Notification to the respondent upon registration 18 U.S.C. §2265(d)(1).
 - 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.



ENFORCEMENT

- Civil Penalties
- Criminal Penalties
- Foreign Orders

This slide features a title bar with an orange square on the left and the word "ENFORCEMENT" in white text on a blue background. Below the title bar, the slide background is light gray with horizontal lines. Three bullet points are listed: "Civil Penalties", "Criminal Penalties", and "Foreign Orders".



State Court Jurisdiction

States have full civil and criminal authority to enforce tribal protection orders.

This slide features a title bar with an orange square on the left and the text "State Court Jurisdiction" in brown. Below the title bar, the slide background is white. A single paragraph of text reads: "States have full civil and criminal authority to enforce tribal protection orders."

Tribal Court Jurisdiction

Pursuant to federal law, a tribal court has full civil jurisdiction to enforce protection orders, including authority to enforce any order through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe. 18 U.S.C. § 2265(e)

Jurisdiction - Generally

- Tribal Court Jurisdiction
 - Civil jurisdiction over Native and non-Native respondents
 - Criminal jurisdiction over Native offenders
- State Court Jurisdiction
 - In Indian Country
 - Civil
 - Criminal

Tribal Full Faith and Credit

- States and territories must enforce Tribal Protection Orders.
- Full faith and credit applies to tribal court orders.
- Tribes may, or may not, enforce foreign orders of protection
 - Pros
 - Cons

Enabling Legislation

- To provide clarification to the Federal law, 49 state legislatures have passed their own full faith and credit laws. One state has attorney general guidelines.
- Some tribal codes include provisions on full faith and credit or recognition of protection orders issued in other jurisdictions.
 - Some track the Federal statute very closely.
 - Others diverge from the language of the statute.

Enforcement

- Enforcement is accomplished using the enforcement laws and procedures of your jurisdiction that govern:
 - Arrest
 - Court enforcement mechanisms (e.g. civil contempt)
 - Detention
 - Bail/Bond
 - Conditions of Release
 - Victim Notification
 - Penalties and Sanctions

ISSUING ORDERS TO ENSURE
OUT OF JURISDICTION
ENFORCEMENT

Drafting the Order Precisely is Important

Make sure the factors/reasons why the court has exercised both personal and subject matter jurisdiction are included in the body of the protection order.

Issuing Orders for Foreign Enforcement

- Ensure orders are clear in terms of what conduct is prohibited.
- Include the language of the federal FFC law.
- Talk to the victim about the presence of weapons, include this information on court documents, and include it in the record.

Issuing Orders for Foreign Enforcement

- Be specific enough in your provisions to allow for enforcement in your jurisdiction, but general enough to allow for enforcement in other jurisdictions should the victim travel.
- Try and clarify custody and support provisions in case the victim wishes to travel/relocate.
- Make sure that the victim gets a copy of the order. Encourage her to make additional copies and place them in her purse, at her job, in her car, at relatives homes, etc.

TYPES OF PROTECTION ORDERS

Scenario Exercises

Scenario

David and Maggie have recently separated. As Maggie left the marital home, David stated that he “would kill her if she didn’t come back [to him].” Maggie is renting a room in La Push, but after David showed up in the driveway several days in a row and also followed her to work while shouting threats at her, Maggie decided to get a protection order. The temporary order was granted on Thursday, December 7th. Maggie then went to visit her friend in Forks. David pulls into the driveway 10 minutes after Maggie and is sitting in his parked car. Because the order was issued that afternoon, David has not yet been served with the order. Maggie has a certified copy of the order in her purse and calls for enforcement. What should Forks Law Enforcement do?

Ex Parte Orders

- In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by state or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent’s due process rights.
- Thus, an ex parte order is entitled to full faith and credit as long as the respondent has notice of the order, even if the hearing has not yet been held.

18 U.S.C. §2265(b)(2)

Scenario

Sabrina has called for enforcement of her order to have her son, Thomas, returned to her. When you arrive on the scene to review her order, it looks like a mutual order. Caleb is listed as having filed a cross petition, Sabrina remains the original petitioner. Upon further review you find terms prohibiting Caleb's conduct but none restricting Sabrina's behavior. There have been no findings that Caleb is entitled to an order.

Mutual Orders

- 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 –
 - no cross or counter petition, complaint, or other written pleading was filed 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)

Scenario

Santa Fe police are called out to a domestic disturbance. When they arrive they find John outside the home with a bloody nose and scratches on his face. He alleges that his ex-girlfriend, Mindy, did this to him. He claims that she left after he called 911. Mindy is found later that night and taken into custody. She is charged with assault and battery. She is released on bond. The judge told her that as a condition of release she must stay 100 feet away from John and not have contact with him in any way. Mindy sends John an apology e-mail and shows up to visit him at his mother's house in Nambe. John calls law enforcement. What happens next?

Protection Orders in Criminal Cases

- Under the federal law, protection orders issued by criminal courts (No Contact Orders) are entitled to full faith and credit.
- Criminal protection orders include those found in pre-trial release orders, conditional releases orders, bond conditions or probation orders.

Scenario

Krissy and George live in Tucson. Krissy has been married to George for 10 years. She has now decided to leave George who became verbally abusive shortly after they wed. In the divorce decree, Krissy requests that George not contact her and remain at least 75 feet away from her, her home, job and car. Krissy requests that George pay her maintenance and that she receive a portion of his retirement plan. George agrees to these terms. The divorce decree is signed by both parties and a judge in Tucson. Krissy moves to San Xavier to live with her sister and be closer to her job there. In the following week George wants to discuss changing the asset divisions with Krissy and comes to San Xavier. Krissy calls law enforcement and shows them her divorce decree. What do the officers do?

Consent or Agreed Orders

- Protection orders issued based upon consent agreements between the parties are entitled to full faith and credit, provided they satisfy the requirements of 18 U.S.C. §2265(b).
- Thus, if the court had subject matter jurisdiction and personal jurisdiction and the respondent had the opportunity to be heard, a consent order must be enforced as if it had been issued in the enforcing jurisdiction.

18 U.S.C. §2265.

Scenario

Susan has an order from Denver against Kelly. This order grants Susan custody of a daughter, Darcy, she and Kelly had adopted together. Kelly now works in Ignacio, it is now summer break and she and Darcy are having an extended visit. When Darcy does not return, Susan calls the tribal police. What happens?

Custody Provisions

- Protection orders often include terms to award temporary custody of the minor children to the victim. Non-issuing courts and law enforcement must enforce custody provisions within protection orders.
- Full Faith and Credit applies to:
 - “any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial or local law authorizing the issuance of protection orders, restraining order or injunctions for the protection of victims of domestic violence, sexual assault, dating violence or stalking.”

18 U.S.C. § 2266(b).

Scenario

Sabrina and Caleb move to Vandenberg AFB where Caleb is stationed. They live on base. It is at this point that Caleb begins hitting Sabrina. During one incident Sabrina calls the MPs for help. Caleb is escorted out of the apartment and appears before the base commander who orders him to refrain from beating Sabrina and to relinquish all of her ID cards and credit/bank cards. Sabrina is sightseeing in Chumash when Caleb attacks her. Bystanders call for help.

Military Protection Orders

- Most military protection orders do not meet the requirements for inter-jurisdictional enforceability because they are usually issued by a commanding officer and the respondent is not accorded due process.

Enforcement of Civilian Orders on Military Installations

- Federal law allows for civil protection orders to be enforced on military installations.
- Civilian Orders of Protection: Shall have the same force and effect on military installations as they do in the issuing jurisdiction. 10 U.S.C. §1561a.
- Civilian Order of Protection is defined the same as in the definition used in 18 U.S.C. §2266(5).
- States should work with local military installations concerning military and civilian protection order to facilitate enforcement.

Protection Order Cheat Sheet

- Ex parte orders (18 U.S.C. §2265(b)(2))
- Mutual orders (18 U.S.C. §2265(c))
- Criminal protection orders (18 U.S.C. §2266(5))
- Consent orders (18 U.S.C. §2265(b))
- Custody provisions (18 U.S.C. §2266(5))
- Enforcement of civilian protection orders on military bases (10 U.S.C. §1561a)
- Military protections orders (not afforded FFC)
- Tribal protection orders (18 U.S.C. §2265)

FIREARMS AND PROTECTION ORDERS

State and Tribal Firearms Prohibitions

- Relief granted by protection orders vary from jurisdiction to jurisdiction.
- Some protection orders may restrict the respondent's right to possess firearms and ammunition for the term of the order.
- You must still enforce these provisions, even if your jurisdiction does not grant similar relief.
- The respondent may be federally prohibited from possessing firearms and ammunition. 18 U.S.C. 922(g)(8).

QUESTIONS?

What's happening in your jurisdiction

Technical Assistance Providers

- Tribal Law and Policy Institute
www.tribalprotectionorder.org
- Southwest Center on Law and Policy
www.swclap.org
- National Center on Protection Orders and Full Faith & Credit
www.fullfaithandcredit.org or (800) 903-0111 x 2

