



## National Indian Nations Conference 2016

Kelly Gaines Stoner

Sarah Henry



### What is full faith and credit for protection orders?

Courts and law enforcement of a state,  
tribe or territory must enforce the  
protection orders of another state tribe or  
territory as if they were their own.

## Why do we have this law?

- Prior to the VAWA full faith and credit provision, petitioners would have to petition for a protection order in any state, tribe or territory to which they traveled.
- This law mandates enforcement in all jurisdictions, allowing for the victim to travel freely.
- It promotes victims' safety and piece of mind and aids in eliminating confusion when law enforcement or courts encounter these types of orders from other jurisdictions.

## What is a protection order?

For purposes of the Violence Against Women Act, a protection order is:

**(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;**

18 U.S.C. § 2266(5)

## What is a protection order?

Any order issued for the purpose of preventing domestic violence, sexual assault, stalking or dating violence.

## What provisions are included?

**(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

How do courts and law enforcement enforce outside orders?

- Do I need to know the laws of all 50 states and all the tribes and territories?

No. To enforce outside orders you use the same laws that you use to enforce orders issued in your jurisdiction. You don't need to know additional laws or rules to enforce orders coming from other places in the United States.

Do I have to enforce an order that does not look like the ones I issue?

Many orders look different. They can vary from tribe to tribe, state to state or even county to county. The appearance of the protection does not affect its enforcement as long as it meets the requirements for enforcement.

## What does full faith and credit require?

The federal law requires that the orders meet certain standards pertaining to jurisdiction and due process.

If the orders do not meet these standards they may not be eligible for enforcement under full faith and credit. If orders do not meet the standards for full faith and credit, they may still be enforced under the rules of comity by the enforcing court.

## Full Faith and Credit Requirements

- Jurisdiction
- Due Process

## Jurisdiction

- The issuing court must have had jurisdiction over the subject matter.
  - The power of the court to hear the type of case before it – in this example protection order cases.
- The issuing court must have had jurisdiction over the parties.
  - The power of the court to render a judgment over a specific person. (action that gave rise to the case occurred in the jurisdiction, individuals live there, etc.)

- **WHAT'S THE BEST WAY TO SHOW THAT A COURT HAS SUBJECT MATTER AND PERSONAL JURISDICTION?**

## Showing Jurisdiction in Indian Country...

- Lay out the basis for tribal subject matter and personal jurisdiction in the protection order. Make findings of fact and conclusions of law on the record and in the protection order as well.
- Using boiler plate language or checking boxes may not be adequate.

## The Montana Test

Requires that the tribal court finds:

1. The parties entered into a consensual relationship with the tribe or its members through commercial dealings, contracts, leases or other arrangements; or
2. The conduct threatens or has some direct effect on the political integrity, the economic security or, the health or welfare of the tribe.

If neither of the above are present, the tribal court may not exercise civil jurisdiction over non-Indians outside of Indian country.

## Due Process

- 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.

## Notice

- This is dictated by state, tribal or territorial law of the issuing jurisdiction. If the order has not been served or it cannot be determined that it has been served, it is not an excuse for lack of enforcement, rather it is an affirmative defense for a violation.
- What about ex parte orders?
  - As long as notice and the opportunity to be heard will be afforded under the confines of the law the order can be enforced.



## More on opportunity to be heard...

- Opportunity to heard means a hearing must have taken place or will take place within the timeframe dictated by law.
- It does not mean that the respondent has availed himself of a hearing.
- This is why ex parte orders, both temporary and final can be enforced.

◦ **NOW THAT WE KNOW  
ALL THESE RULES, HOW  
DO WE KNOW WHOSE  
RULES/LAWS APPLY?**

## Issuing Jurisdiction's Responsibilities

- Whom the order protects
- The terms and conditions of the order
- How long the order remains in effect

## **ENFORCING** Jurisdiction Determines:

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

What happens if the enforcing jurisdiction does not offer the same relief that is provided in the protection order? Do they still have to enforce those provisions?

° **YES.**

° **MANY PROTECTION ORDERS LOOK DIFFERENT, BUT SOME COMMON RULES IN DRAFTING CAN MAKE IT MUCH EASIER TO GET THEM ENFORCED IN ANOTHER JURISDICTION.**

## Protection Orders Look Different...

- They may be called different names: protection order, protection from abuse order, restraining order or injunction.
- There is no specific language that must be included, but there are some recommendations to make for easier recognition by other jurisdiction's courts and law enforcement.
- There is no specific layout or format required.

## Considerations for Those Writing Protection Order Provisions.

- Make sure orders are clear and legible.
- Avoid vague terms like "reasonable."
- Make sure that orders are specific, but not too specific, i.e. stay away from childcare center, school, work.
- Firearms are addressed if necessary.
- Address full faith and credit in your orders – respondent will have notice and opportunity to be heard, order is covered under FFC and enforceable in all 50 states, etc.
- State that court had subject matter and personal jurisdiction.
- Make sure the name of the court, name of the judicial officer and contact information of the court are provided on the order.
- Don't issue mutual protection orders.



**° LET'S DO AN  
EXERCISE.**



**° REPORT BACK.**



## ° THINKING AHEAD...



### When drafting protection orders remember...

- This order and the provisions are the basis for a possible future prosecution of a protection order violation. Give law enforcement and the prosecutor clear tools with which to do their jobs.
- The commands of the issuing court should be specific enough to protect the petitioner, but broad enough to allow her to seek enforcement outside the issuing jurisdiction.
- Don't be afraid to utilize write in provisions to get the relief that petitioners need.



**SOME OTHER THINGS  
TO NOTE...**



**Registration**

## Registration and Filing

**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.

18 U.S.C. §2265(d)(2)

## Notice of Registration

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. 18 U.S.C. §2265 (d)(1).



## State/Tribal Law

- Many states and tribes also address the registration issue with a statute that looks substantially similar to the federal law.
- If the state or tribe is silent on registration or they have a policy that appears to mandate registration or “domestication” of other jurisdictions orders prior to enforcement, this is in conflict with the federal mandate.

## No Fees Allowed

## VAWA No Fees Certification Requirement

Jurisdictions receiving STOP grants & Arrest grants MUST certify that:

(a) In general. A State, Indian tribal government, or unit of local government, shall not be entitled to funds under this part unless the State, Indian tribal government, or unit of local government--

(1) certifies that its laws, policies, and practices do not require, in connection with the prosecution of any misdemeanor or felony domestic violence, dating violence, sexual assault, or stalking offense, or in connection with the filing, issuance, registration, modification, enforcement, dismissal, withdrawal or service of a protection order; or a petition for a protection order; to protect a victim of domestic violence, dating violence, sexual assault, or stalking, that the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, issuance, registration, modification, enforcement, dismissal, withdrawal or service of a warrant, protection order; petition for a protection order; or witness subpoena, whether issued inside or outside the State, tribal, or local jurisdiction; or

(2) gives the Attorney General assurances that its laws, policies and practices will be in compliance with the requirements of paragraph (1) within the later of--

(A) the period ending on the date on which the next session of the State legislature ends; or

(B) 2 years after the date of the enactment of the Violence Against Women Act of 2000 [enacted Oct. 28, 2000].

42 U.S.C. 3796gg-5. See also 42 U.S.C. 3796hh(c)(1)(D).

## What does that mean?

The petitioner cannot be made responsible for the fees associated with the filing or issuance of protection orders in certain jurisdictions. This includes fees for service in the jurisdiction of issuance or outside the issuing jurisdiction.

◦ **MANY TYPES OF ORDERS,  
ALMOST ALL OF THE  
RULES ARE THE SAME...**

### Types of Protection Orders

- 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)

## 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)

## 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)

## Criminal Protection Orders

- Under the federal law, protection orders issued by criminal courts 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.

## 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. § 2266(5)

## 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(5)(B).

## 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.

## Tribal Protection Orders

- States and territories must enforce Tribal Protection Orders.
- 18 U.S.C. § 2265 applies to tribal court orders.

• **A NOTE ON  
FIREARMS...**

## Firearms and Protection Orders

Certain domestic violence protection orders can trigger a federal firearm prohibition. The restricted party may not be able to purchase or possess firearms or ammunition for the duration of the protection order. See 18 U.S.C. §922(g)(8).

° **QUESTIONS?**



## Available Resources...

- Full Faith and Credit Resources
- [www.tribalprotectionorder.org](http://www.tribalprotectionorder.org) issues relating to issuing and enforcing tribal protection orders
- [www.tlpi.org](http://www.tlpi.org) information related to VAWA 2013
- <http://www.ncai.org/tribal-vaawa/resources/code-development> information related VAWA 2013
- <http://www.bwjp.org/our-work/projects/protection-orders.html> National Center on Full Faith and Credit
- Full Faith and Credit Resources
- <http://www.ncjfcj.org/resource-library/publications/civil-protection-orders-guide-improving-practice> Civil Protection Orders: A Guide to Improving Practice (CPO Guide)
- <http://www.bwjp.org/resource-center/resource-results/engaging-in-a-best-practice-assessment-of-the-civil-protection-order-system.html> Tool to assess your Protection Order System and CPO Guide
- <http://www.ncjfcj.org/resource-library/publications/passport-safety> Passport to Safety: Full Faith and Credit – A Judge's Bench Guide
- <http://www.ncjfcj.org/resource-library/publications/domestic-violence> National Council of Juvenile and Family Court Judges domestic violence publications
- **I'll clean up this list and provide fresher more applicable resources for this audience**

## Contact Information

Tribal Law and Policy  
Institute

National Center on  
Protection Orders and  
Full Faith & Credit

(800) 903-0111, choice 2

[ncffc@bwjp.org](mailto:ncffc@bwjp.org)

[www.fullfaithandcredit.org](http://www.fullfaithandcredit.org)

