



# **Using Full Faith & Credit to Protect Survivors of Domestic Violence & Stalking**

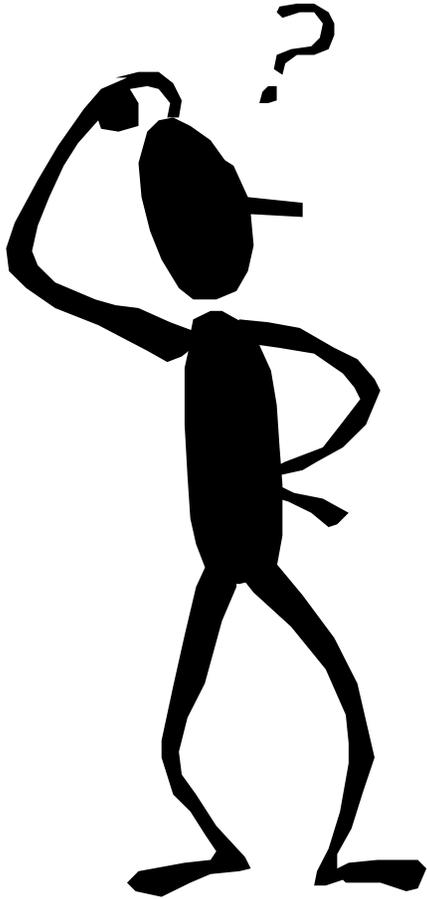
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***SLIDES DEVELOPED BY  
THE NATIONAL CENTER ON FULL FAITH CREDIT***

# Full What & What?

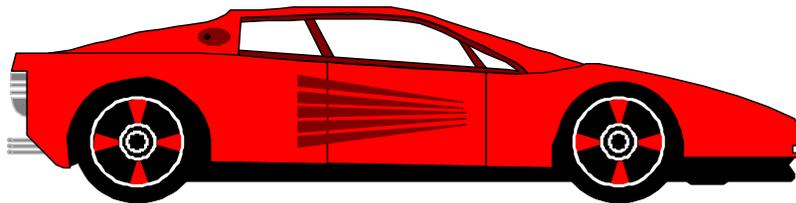
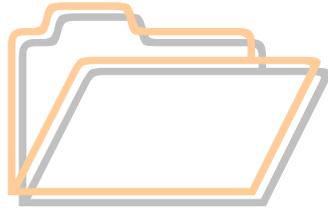
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What does  
full faith & credit  
mean to you?

HINT:  
faith ≠ religion  
credit ≠ \$

# What do these things have in common?



- **Driver's license**
- **Marriage  
(certificate)**
- **Divorce (decree)**



# Full Faith & Credit

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- **Full faith & credit is NOT a novel concept.**
- **“Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.” U.S. Constitution, Article IV, Section 1.**



# Supremacy Clause

U.S. Constitution, Article VI, Clause 2

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**“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”**



# Safety First!

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- ☞ **The survivor's safety should always come first.**
- ☞ **law enforcement officers' job:**
- ☞ **preserve the peace &**
- ☞ **protect the safety & lives of the public.**

# **Federal Definition of “Protection Order”**

## **18 U.S.C. §2266(5) (2000)**

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**Includes ANY injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including ANY temporary or final order issued by a civil and criminal court**

*(other than a support or child custody order issued pursuant to State divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other Federal law)*

**whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection.**



# **Full Faith & Credit Provision of VAWA**

## **18 U.S.C. §2265(a)**

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**Any protection order issued**

*that is consistent with subsection (b) of this section*

**by the court of one State or Indian tribe (the  
issuing State or Indian tribe)**

**shall be accorded full faith and credit by the court  
of another State or Indian tribe (the enforcing  
State or Indian tribe)**

**and enforced as if it were the order of the  
enforcing State or tribe.**



# **18 U.S.C. §2265(b)(1)**

## **personal & subject matter jurisdiction**

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

**(1) such court has jurisdiction over the parties and matter under the law of such State or Indian tribe;**

**AND**



# **18 U.S.C. §2265(b)(2)**

**due process: reasonable notice & opportunity to be heard**

**(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process.**

**In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.**



# **18 U.S.C. §2265(c)**

## **NO mutual orders**

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**A protection order issued by a State or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner**

**is NOT entitled to full faith and credit if -**



# 18 U.S.C. §2265(c)

mutual orders not entitled to enforcement against petitioner if:

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(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.



# **18 U.S.C. §2265(e)**

**tribal courts have full civil jurisdiction to enforce POs**

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**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.**



# Pros of Registering/Filing Protection Orders

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## Pros:

- **May be required under state/tribal law  
(though contrary to VAWA 2000)**
- **May facilitate enforcement in the new jurisdiction,  
as well as other jurisdictions if entered into NCIC  
POF**
- **May stop new firearm purchases under Brady Act**

# Cons of Registering/Filing Protection Orders

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## Cons:

-  **Notice may be sent to the respondent  
[though contrary to VAWA 2000 §2265(d)(1)]**
-  **May become a searchable public record**
-  **Inconvenience / Practicality**
-  **Cost [though not since October 28, 2002 no fees  
certification in jurisdictions that wish to continue  
receiving STOP & Arrest grants]**



# **18 U.S.C. §2265(d)(2)**

**registration CANNOT be a prerequisite to enforcement**

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**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 or tribal jurisdiction.**



# **18 U.S.C. §2265(d)(1)**

**NO notice of registration to respondents**

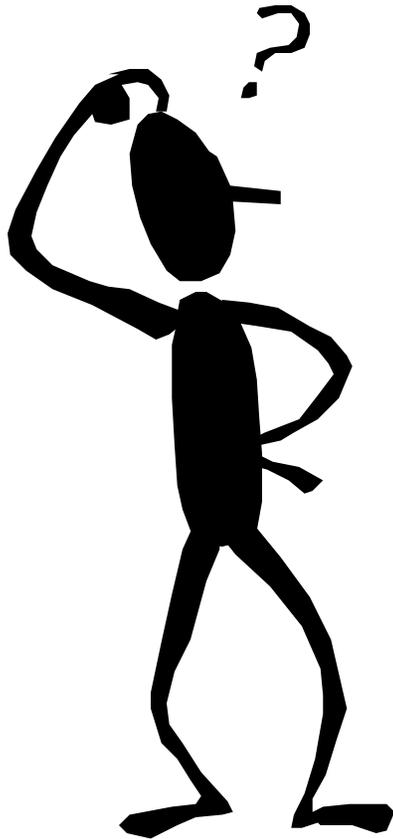
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## **NOTIFICATION.**

**A State or Indian tribe according full faith and credit to an order by a court of another State or Indian tribe 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 or tribal jurisdiction unless requested to do so by the party protected under such order.**

# **“Show Me the Order”**

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**What if there is  
no paper copy of  
the protection  
order available?**



**If there is no paper copy of the protection order immediately available, officers should:**

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**Consider other possible violations of state, tribal, &/or federal law.**

**Possible State Crimes:**

**assault,**

**burglary,**

**breaking & entering,**

**stalking,**

**terroristic threats,**

**trespass, etc.**



# Possible Federal Crimes

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## DV & Stalking Crimes

- **Interstate Travel to Commit Domestic Violence**  
18 U.S.C. § 2261
- **Interstate Violation of a Protection Order**  
18 U.S.C. §2262
- **Interstate Stalking**  
18 U.S.C. §2261A

## Firearms Violations

- **possession of a firearm while subject to a protection order**  
18 U.S.C. §922(g)(8)
- **possession of a firearm by someone convicted of a qualifying misdemeanor crime of domestic violence**  
18 U.S.C. §922(g)(9)
- **felon in possession of a firearm**  
18 U.S.C. §922(g)(1)



**Does that mean the PO violation is  
hopeless without a paper copy?**

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**No.**

**Use alternate means for verifying the  
protection order's existence.**

# Alternative Means for Verifying Protection Orders

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**interview the parties!**



**use your professional judgment & expertise**



**check the national registry “NCIC POF”  
(FBI’s National Crime Information Center  
Protection Order File)**



**check state, tribal, or local protection order  
registries in the issuing jurisdiction**



**check with the issuing court**



**check with law enforcement in the  
issuing jurisdiction**



# **Good Faith Immunity for Law Enforcement Officers**

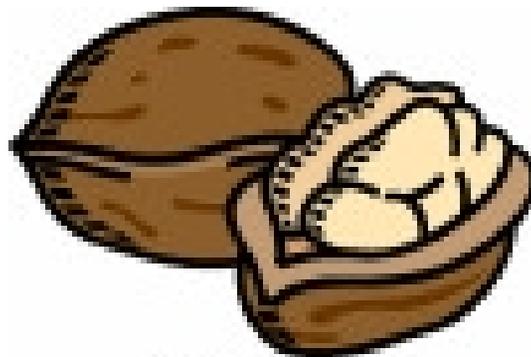
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**Most jurisdictions provide  
civil & criminal immunity for  
law enforcement officers  
acting in good faith.**

# Full Faith & Credit

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(in a nutshell )



[nvtech.com](http://nvtech.com)

# **EVERY jurisdiction is both an issuing jurisdiction & an enforcing jurisdiction!**

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## **ISSUING**

- 📄 issue orders here that will be carried to other jurisdictions & require enforcement there
- 📄 judges should issue clear orders to facilitate enforcement & protect local residents when they travel to other jurisdictions

## **ENFORCING**

- 📄 (law enforcement & courts) presented with orders from other jurisdictions to enforce here



## The ISSUING Jurisdiction Determines:

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**whom the order protects**  
(e.g. same sex couples or roommates)



**the terms and conditions of the order**  
(including all relief issued)



**how long the order remains in effect**  
(e.g. pendency of a criminal case,  
lifetime, 18 months)



## The ENFORCING Jurisdiction Determines:

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-  **how the order is enforced**  
(e.g. contempt of court or a crime)
-  **the arrest authority of responding law enforcement**
-  **detention & notification procedures**
-  **penalties & sanctions for violations**

# Protection Orders from Other Jurisdictions

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**brief overview  
of key concepts**





# Ex Parte Orders

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Ex parte orders ARE 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.

# “Mutual” Protection Orders

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Protection order provisions issued against the petitioner are ONLY entitled to full faith and credit if:

- the respondent filed a cross or counter petition, complaint, or other written pleading;  
OR
- the respondent filed a cross or counter petition AND the court made specific findings that each party was entitled to a protection order.



# Criminal Protection Orders

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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 release orders, bond conditions, or probation orders.



# Consent Orders

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Protection orders issued based upon consent agreements between the parties are entitled to full faith & credit, provided they satisfy the requirements of 18 U.S.C. § 2265(b).

If the court had subject matter & personal jurisdiction, & the respondent had notice & an opportunity to be heard, a consent order must be enforced as if it had been issued in the enforcing jurisdiction.

# National Center on Full Faith and Credit

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**(800) 256 - 5883, ext. 2**



**Free Informational Materials & Brochures**



**Technical Assistance & Problem-Solving**



**(On-Site) Individualized Training / Education**



**PROSPER project “Protection Order System Practices, Enhancement, and Review”**

- laws, policies, protocols
- actual practices -- issuance through enforcement
- on-site assessment, workshop, follow-up consultations and review