


FULL FAITH AND CREDIT FOR PROTECTION ORDERS


Protecting Native Women
from Violence

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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-Natives.
- This rate is almost twice the national average.




The Myths of Violence

- Domestic Violence**
 - Alcohol, drug abuse, stress, and mental illness cause domestic violence.
 - Domestic violence is a personal problem between a husband and a wife.
 - If it were that bad, she would just leave.
- Sexual Violence**
 - Stranger
 - Visible, Physical Injury
 - Women, by their nature, ask for it




PROTECTION ORDERS

What are they?
How do they work?




Protection Orders

- A “stay away” order issued by a tribal or state government.
- The order restricts the contact between a petitioner and a respondent.




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




Tribal Orders

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



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



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

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PROTECTION ORDERS

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Enforcement

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Historical Enforcement Dilemmas

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- Constitutional principles didn't encompass orders for protection, thus:
- Enforcement of tribal orders was inconsistent, and in some cases, non-existent
 - Who issued?
 - Jurisdiction?
 - Who is “violating” the order and who is the “victim?”

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Enforcement


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- Civil Orders for Protection
 - Tribal Court
 - State Court
- Violation of Orders for Protection
 - Issued by?
 - Violated where?
 - Civil or Criminal Penalty?




FULL FAITH AND CREDIT

The Violence Against Women Act
18 U.S.C. §2265




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 tribe*




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, Indian tribe, 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 the enforcing 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
- Fees** 42 U.S.C. §§3796hh, 3796gg-5.
 - Stop Grant or Arrest Grant?




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.




STOP or GTEAP Jurisdictions

Jurisdictions receiving STOP grants & Arrest grants **MUST** certify that their laws, policies, and practices do NOT require the victim bear the costs associated with the filing of criminal charges against the offender, or the costs associated with the filing, of protection orders, whether issued inside or outside the State, tribal, or local jurisdiction. 42 U.S.C. 3796gg-5 and 42 U.S.C. 3796hh-4.



State Court Jurisdiction

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)




ENFORCEMENT

- Civil Penalties
- Criminal Penalties
- Foreign Orders




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
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Full Faith and Credit Enforcement Procedures

- 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 state/tribe that govern:
 - Arrest
 - Court enforcement mechanisms (e.g. civil contempt)
 - Detention
 - Bail/Bond
 - Conditions of Release
 - Victim Notification
 - Penalties and Sanctions




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 your client about the presence of weapons, include this information on the petition, and bring them to the judge's attention at the hearing so the information is included 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 your client travel.
- Try and clarify custody and support provisions should your client travel/relocate.
- Make sure that your client 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.



Criminal Penalties

- Take notice of the penalties recommended in the Order
 - Are they criminal in nature?
 - If yes, what is the race of the offender?
 - Are you in a PL 280 state?

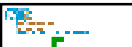


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PUBLIC LAW 280

18 U.S.C. §1162
28 U.S.C. §1360

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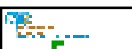


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The PL 280 Nuisance

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- Extended criminal authority of tribes from the federal to state governments
 - California, Minnesota, Nebraska, Oregon, Wisconsin, Alaska; Nevada, Idaho, Iowa, Washington, South Dakota, Montana, North Dakota Utah
- PL 280 did NOT eliminate tribal jurisdiction




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PL 280 Civil Jurisdiction

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- PL 280 TRIBES
 - Over Indians, subject to limits in Indian Civil Rights Act (ICRA)

- STATE
 - Over suits involving non-Indians generally, with exceptions found in Public Law 280




PL 280 Criminal Jurisdiction (VERY GENERALLY!)

- Indian perpetrator & Indian victim: Common felonies - Federal Court; Misdemeanors - Tribal Court.
- Indian perpetrator & non-Indian victim: Felonies - Federal Court; Misdemeanors - Tribal Court.
- Indian perpetrator of victimless crime: Felonies - Federal Court; Misdemeanors - Tribal Court.
- Non-Indian perpetrator & non-Indian victim: State Court.
- Non-Indian perpetrator & Indian victim: Federal Court.
- Non-Indian perpetrator of victimless crime: State Court.




PL 280 & Protection Order Violations

- If a Native offender violates the terms of a protection order, can the state prosecute?
 - Will they?
 - Will the tribe?
 - Will the feds?




PL 280 & Protection Order Violations

- If a non-Native offender violates a civil order in Indian Country is the state going to act?
 - Is it a state order?
 - Does the tribe have enabling language?
 - Is it a tribal order?
 - Does the state have jurisdiction over the offender on the reservation?



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CUSTODY PROVISIONS




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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).



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EX PARTE ORDERS




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 PROTECTION ORDERS




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)



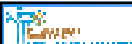
CONSENT ORDERS




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. §2265.




ORDERS OF PROTECTION IN CRIMINAL CASES




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.




FIREARMS AND ORDERS FOR PROTECTION



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).



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FULL FAITH AND CREDIT

Technical Assistance

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Technical Assistance Providers

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