

## What is an Order of Protection?

The term “protection order” 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 and faith 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.

## Intent of the Law

### For Victims

- Cross-jurisdictional protection afforded by valid protection orders.

### For Abusers

- Cross-jurisdictional accountability for violation of valid protection orders.

### For Judges

- Interstate recognition and enforcement of the valid protection orders they enter.
- Enforcement of valid protection orders they may encounter from other jurisdictions.

## No-Cost Provision of the Violence Against Women Act

Courts should not charge a victim of domestic violence, stalking, or sexual assault any costs associated with the filing, issuance, registration, or service of protection orders, civil or criminal, including intra- and extra-jurisdictional orders. This no-cost provision also applies to any fees or costs associated with a criminal matter related to domestic violence. Charging any of these costs will render a jurisdiction ineligible for certain VAWA funds. For more information regarding costs and other VAWA certification requirements, contact the Office on Violence Against Women, U.S. Department of Justice. 42 U.S.C. § 3796 hh (c) (4).

## Tribal Orders

The full faith and credit provision applies to tribal court orders. State courts are required to recognize and enforce valid tribal court protection orders. Regardless of the originating court, tribal courts have full civil jurisdiction to enforce protection orders against any respondent by means of civil contempt proceedings and exclusion from Indian lands and other appropriate mechanisms. 18 U.S.C. § 2265 (e).

## Criminal Protection Orders

The full faith and credit provision applies to valid criminal orders of protection. Generally issued as a condition of release, probation, or parole, such orders may be difficult to enforce because of verification problems and because of a lack of arrest authority in the enforcing jurisdiction. The issuing court should determine whether extradition is necessary. The enforcing jurisdiction should respond to underlying crimes committed in the jurisdiction.

**Consider issuing a free-standing civil or criminal protection order to avoid potential problems.**

## NOTE

Areas highlighted in light blue indicate areas changed by VAWA 2000.

## Child Custody

The court should act to protect the safety and welfare of the children of either party.

### Custody/Visitation in Protection Orders

If the protection order contains custody or visitation provisions that comply with the federal Parental Kidnapping Prevention Act (PKPA), as amended in 2000, 28 U.S.C. § 1738A, and the issuing state's jurisdictional statutes (the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), or the Uniform Child Custody Jurisdiction Act (UCCJA)), the court must enforce the custody or visitation terms.

### Protection Orders Silent on Custody/Visitation

The court should accept emergency jurisdiction if permitted by its state UCCJA/UCCJEA provisions and other state statutes or case law and proceed pursuant to those provisions.

### Modification of Custody Provisions in Protection Orders

When an abused parent or a parent of an abused child seeks modification of a custody or visitation provision in a protection order from a court in a non-issuing state, the court may modify the custody or visitation provision according to the PKPA rules of continuing jurisdiction. The court may exercise emergency jurisdiction under its UCCJA or UCCJEA statute, consistent with the PKPA, in order to protect a child. Under the PKPA, a court may exercise emergency jurisdiction if the child is physically present in the state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse. This means that when a victim of domestic violence flees across state lines with children, the refuge state court may exercise emergency jurisdiction temporarily even if the children were not abused or threatened, if a sibling or a parent of the child was abused or threatened.

If the enforcing court does not have jurisdiction over custody matters, the judge should act to protect the victim and the child and refer the custody and visitation issues to the appropriate state court for disposition. *Note: The comments in the UCCJEA specify that findings of abuse from a protection order proceeding shall not be relitigated. For information on related topics please contact the Resource Center on Domestic Violence: Child Protection and Custody at (800) 527-3223, or the National Center on Full Faith and Credit at (800) 256-5883.*

### Child Support in Protection Orders

If child support is ordered within a protection order, an enforcing court should look to the federal Full Faith and Credit for Child Support Orders Act, 28 U.S.C. § 1738B (FFCCSOA) and the state version of the Uniform Interstate Family Support Act (UIFSA) and enforce the provision as written. Judges should be mindful that all child support enforcement strategies raise safety concerns for victims and should consult with the individuals regarding their wishes.

## Military Orders

VAWA does not address military protection orders or the enforcement of state court orders on military installations. State courts should develop agreements with local military installations concerning military enforcement of state court protection orders.

## Battered Immigrants

Battered immigrant women face difficult challenges. VAWA offers some solutions. Issues are technical and require expert consultation. Judges should be aware of the complexity of these issues and offer general announcements regarding resource referrals. In some cases it may be prudent to suggest the victim consult with an informed advocate and/or attorney before entering orders that may compromise the victim's safety or immigration status. 8 U.S.C.A. § 1101, et seq.

# Federal Firearms Provisions

## Gun Control Act of 1994

### 18 U.S.C. § 922 (g)(8)

Applies to persons subject to “qualifying” state or tribal protection orders. It is unlawful for such persons, while the protection order is in effect, to:

- Possess a firearm or ammunition.
- Ship or transport firearms or ammunition in interstate or foreign commerce.
- Receive any firearm or ammunition which has been so shipped or transported.
- Have seized firearms returned.

### Qualifying Protection Orders Under § 922 (g)(8)

A qualifying order is one that prohibits:

- Harassing, stalking or threatening an intimate partner or the child of such partner, or
- Engaging in other conduct which would place an intimate partner in reasonable fear of bodily injury to self or child.

Intimate partner: current or former spouse, co-parent, or one who cohabits or has cohabitated with the subject of the protection order.

### A Qualifying Order Also Must Include Either:

- A finding that the person subject to the order represents a credible threat to the physical safety of an intimate partner or child, or
- An explicit prohibition against the use, attempted use, or threat of physical force against an intimate partner or child which would reasonably be expected to cause bodily injury.

### Salient Features of § 922 (g)(8)

Applies only to protection orders issued after a person has had actual notice and opportunity to participate.

- Includes a broad definition of “firearms” and “ammunition.”
- Does not apply to official use by military or law enforcement personnel while on duty.

## Gun Control Act (1996 Lautenberg

### Amendment) 18 U.S.C. § 922 (g)(9)

Applies to persons convicted of a qualifying misdemeanor crime of domestic violence.

- Imposes criminal liability on anyone who has been convicted of a qualifying misdemeanor crime of domestic violence and subsequently possesses, ships, or transports a firearm or ammunition.
- Applies to qualifying convictions that occurred both before and after September 30, 1996 (the date of enactment).
- Carries no official-use exemption for law enforcement or military personnel.

### Qualifying Domestic Violence Misdemeanors Under Lautenberg

A qualifying domestic violence misdemeanor is any misdemeanor that:

- Constitutes a violation of either federal or state law;
- Had as an element either use or attempted use of physical force or threatened use of a deadly weapon; and,
- Was committed by a current or former spouse, parent, or guardian of the victim; a person with whom the victim shares a child in common; a person who is cohabiting or has cohabited with the victim as spouse, parent, or guardian of the victim; or a person similarly situated to the spouse, parent, or guardian of the victim.
- Finally, the accused must have been represented by counsel or made a valid waiver and, if entitled to trial by jury, was so tried or made a valid waiver.

### Creating a Safe Climate in the Judicial System

- Provide leadership to ensure the establishment of clearly defined, “user-friendly” procedures for processing requests for enforcement of protection orders and incorporate the procedures into regular training.
- Provide local safety information to persons seeking enforcement.
- Develop linkages to agencies with related responsibilities.
- Provide information about how the court can be contacted, (including the court’s telephone number and address) and be willing to contact courts of other jurisdictions to clarify issues and questions if they arise.

## Technical Assistance and Further Information

### Domestic Violence Assistance to Judges

National Council of Juvenile and Family Court Judges  
(800) 527-3223  
[www.nationalcouncilfvd.org](http://www.nationalcouncilfvd.org)

### Technical Assistance on Full Faith and Credit

National Center on Full Faith and Credit  
(800) 256-5883, ext. 2  
Battered Women’s Justice Project  
(800) 903-0111, ext. 2

### Technical Assistance for Law Enforcement

International Association of Chief of Police  
(800) The-IACP • [www.theiacp.org](http://www.theiacp.org)

### Website for Office on Violence Against Women

U.S. Department of Justice  
(202) 307-6026  
[www.ojp.usdoj.gov/vawo](http://www.ojp.usdoj.gov/vawo)

### Assistance for Tribal Court Orders

American Indian Law Center, Inc.  
(505) 277-5462  
Northern Plains Tribal Judicial Institute  
(701) 777-6176  
Sacred Circle: National Resource Center to End Violence Against Native Women  
(877) 733-7623

### Assistance to Victims of Domestic Violence

National Domestic Violence Hotline  
(800) 799-SAFE, TTY (800) 787-3224  
(24 hours/day, for referral to state and local programs)

### Assistance for Battered Immigrants

National Immigration Project of the National Lawyers Guild  
(617) 227-9727  
[www.nationalimmigrationproject.org](http://www.nationalimmigrationproject.org)

## Full Faith and Credit Given to Protection Orders

### 18 U.S.C. § 2265

#### (a) Full Faith and Credit.

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.

#### (b) Protection Order.

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
- (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.

#### (c) Cross or Counter Petition.

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—

- (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 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.

##### (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 or tribal jurisdiction.

#### (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 (5) (8) Definitions

#### (5) Protection Order.

The term 'protection order' 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.

#### (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.



For more copies, please contact the National Council of Juvenile and Family Court Judges at 1-800-527-3223.  
Resolved: That the Conference of Chief Justices and the Conference of State Court Administrators express their commitment to taking the necessary steps to support implementation of the Full Faith and Credit Provisions of the Violence Against Women Act (18 U.S.C. § 2265).  
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