

A Prosecutor's Guide to

FULL FAITH AND CREDIT FOR PROTECTION ORDERS

Protecting Victims of Domestic Violence



A Prosecutor's Guide to Full Faith and Credit for Protection Orders Protecting Victims of Domestic Violence

What Is Full Faith and Credit?

The federal Violence Against Women Act (VAWA) requires jurisdictions¹ to give full faith and credit to protection orders issued by other jurisdictions. 18 U.S.C. § 2265. Full faith and credit means that jurisdictions must honor and enforce protection orders.

“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(a).

The Violence Against Women Act of 2000 (effective October 28, 2000) amended the full faith and credit provision to include new sections concerning the filing/registration of protection orders issued in other jurisdictions. The provision now includes the following:

- A protection order that is otherwise consistent with the requirements of § 2265 must be given full faith and credit even if the enforcing jurisdiction requires the filing or registration of the order, and the order has not been filed or registered;
- An enforcing jurisdiction may not notify the respondent upon the filing or registration of a protection order issued in another jurisdiction, unless a protected person requests it; and
- Tribal courts 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.

Additionally, the definition of “protection order” in 18 U.S.C. § 2266 was amended to clarify that custody and support provisions in protection orders issued in other jurisdictions must be enforced.

What Does Full Faith and Credit Mean...

for victims?

Victims who travel, work or relocate should expect that their protection orders will be enforced in all jurisdictions.

¹Throughout this brochure “jurisdiction” is used in place of state, tribe, or territory.

for prosecutors?

Prosecutors can hold offenders accountable for violations of enforceable protection orders issued in all jurisdictions and can enhance the safety of victims.

for judges?

Orders that judges issue will be enforced in all jurisdictions, and they must enforce orders issued elsewhere.

for advocates?

Advocates should assist victims in obtaining enforceable protection orders and facilitate enforcement wherever victims go.

for abusers?

Abusers will be held accountable for violations of protection orders across the country.

Which Jurisdictions Are Covered?

All 50 states, Indian tribal lands, the District of Columbia, the U.S. Virgin Islands, Puerto Rico, American Samoa, the Northern Mariana Islands, and Guam. [In this booklet, the term “state” includes a state of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States.]

Implications for State-Tribe and Tribe-Tribe Enforcement of Protection Orders

The full faith and credit provision of VAWA applies to orders issued by tribal courts. Therefore, state courts are required to recognize and enforce protection orders issued by tribal courts. The full faith and credit provision also contemplates that tribal courts will recognize and enforce protection orders issued by state courts and other tribal courts. However, tribal court enforcement of these orders implicates tribal sovereignty issues. It is important to know the individual practices of tribal courts in the relevant jurisdiction.

While Indian tribes do not have criminal jurisdiction over non-Indians, many law enforcement officers in Indian country have the authority to arrest non-Indian offenders and transport them to state or federal authorities for criminal prosecution. Tribal courts retain their powers to assert civil jurisdiction over non-Indians to enforce protection orders; Congress affirmed this by passing an amendment to the full faith and credit provision (18 U.S.C. § 2265(e)) in 2000. These powers may be exercised through civil contempt proceedings and/or exclusion from tribal land.

How Is a Protection Order Defined?

Under the full faith and credit provision:

“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.” 18 U.S.C. § 2266.

Protection Orders Covered by the Federal Full Faith and Credit Provision

The full faith and credit provision applies to enforceable civil and criminal protection orders issued by tribes or states, whether ex parte, after a hearing, or by agreement. Orders may differ from jurisdiction to jurisdiction in form, content, length, layout, or name (e.g., protection from abuse order, no contact order, stay away order, harassment order, restraining order, permanent order, conditions of release order).

Military Protection Orders

The Violence Against Women Act did not provide for the recognition of and full faith and credit for protection orders on military installations. However, in 2002 the Armed Forces Domestic Security Act (10 U.S.C. § 1561a) was signed into law to afford civilian orders of protection the “same force and effect on a military installation as such order has within the jurisdiction of the court that issued such order.” The Secretary of Defense is responsible for drafting regulations to guide implementation of the law. To view the regulations once they are made available, visit www.dtic.mil/whs/directives/search.html.

When Is a Protection Order Enforceable Under Full Faith and Credit?

For a protection order to be enforceable, it must meet the following conditions:

- The court that issued the order must have had **personal** and **subject matter jurisdiction**. 18 U.S.C. § 2265(b)(1).

- The respondent must have had **notice** and an **opportunity to be heard** sufficient to protect that person’s right to due process. 18 U.S.C. § 2265(b)(2).

Ex parte Orders

If the protection order is ex parte, notice and opportunity to be heard must be provided within the time required by the law of the issuing jurisdiction, and in any event within a reasonable period of time after the order is issued, sufficient to protect the respondent’s due process rights. 18 U.S.C. § 2265(b)(2). This means that the protection order is enforceable after the respondent has been provided with notice even if the hearing has not yet been held, as long as there will be an opportunity to be heard within a reasonable period of time before a final order is issued.

Orders Issued Against Both Parties

In a single protection order issued against both parties, provisions against the petitioner are not entitled to full faith and credit if:

- no cross or counter petition, complaint, or other written pleading was filed by the respondent 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.

Which Jurisdiction’s Laws Apply?

The jurisdiction that *issues* the order determines:

Who is protected

Example: A protection order must be enforced even if the protected party would not be eligible for a protection order in the enforcing jurisdiction (e.g., the victim is of the same gender as the respondent and in the enforcing jurisdiction, a petitioner could not obtain a protection order against her same-gender partner).

The terms and conditions of the order

Example: A protection order is enforceable even if it includes relief that is not available in the enforcing jurisdiction (e.g., the protection order requires relinquishment of firearms, but the enforcing jurisdiction’s protection order code does not provide for such relief).

How long the order is in effect

Example: A protection order must be enforced even if it remains in effect for a longer duration than protection orders issued in the enforcing jurisdiction (e.g., a protection order issued for the lifetime of the victim must be enforced in a jurisdiction that issues orders for a maximum of 1 year).

The jurisdiction that enforces the order determines:

How the order is enforced

Example: If it is a crime to violate an order in the enforcing state, but not in the issuing state, the defendant faces criminal liability in the enforcing state.

The arrest authority of responding law enforcement

Example: If violation of a protection order requires arrest in the enforcing state, then law enforcement must arrest

for violation of an order issued in another jurisdiction.

Detention and victim notification of release

Penalties or sanctions for violations of the order

Example: If it is a misdemeanor in the issuing jurisdiction to violate a protection order while menacing the protected party, but it constitutes a felony in the enforcing jurisdiction, then the defendant can be convicted of a felony in the enforcing jurisdiction.

ISSUANCE OF PROTECTION ORDERS

Crafting an Enforceable Order

For prosecutors who are involved in developing forms or petitioning for protection orders, the following information should be included on the face of the protection order. Such statements may increase the likelihood of enforcement in another jurisdiction.

Ensure that the order:

- Reflects, on its face, compliance with VAWA's full faith and credit provision (18 U.S.C. § 2265) (e.g., "This protection order is enforceable in all fifty (50) states, the District of Columbia, tribal lands, and U.S. territories.") and states that the issuing court had jurisdiction over the parties and the subject matter and that the respondent had notice and an opportunity to be heard. If the order is issued ex parte, the order should state that the respondent will be provided with an opportunity to be heard and include the hearing date.
- Cites the state/tribal statute upon which the court's decision and order are based.
- Provides the name, location, and telephone number of the issuing court, and, where available, the telephone number of the protection order registry within that jurisdiction.
- States the duration of the order and its expiration date, if any.
- Includes National Crime Information Center Protection Order File identifiers on the form and any other identifying information required by tribal or state registries.
- Provides notice of the federal domestic violence and stalking crimes and the federal firearm prohibitions (e.g., "Interstate violation of this order may subject the defendant to federal criminal penalties. 18 U.S.C. sections 2261, 2261A, and 2262. In addition, possession, transportation, or receipt of a firearm while this order

remains in effect or after conviction for a misdemeanor crime of domestic violence may also subject the defendant to federal criminal penalties. 18 U.S.C. sections 922 (g)(8)–(9).") Contact the National Center on Full Faith and Credit for assistance in crafting these notices. (800) 256-5883 ext. 2 or (202) 265-0967.

Ensure that protection orders are legible and use clear, concise language (e.g., when crafting visitation provisions, be precise about times, location, persons, and duration).

Crafting State and Tribal Protection Orders to Facilitate Federal Firearm Prosecutions

Federal law prohibits possession of a firearm while subject to a qualifying state or tribal protection order. Ensure that your protection order language conforms with the language of 18 U.S.C. § 922(g)(8).

Facilitating Protection

The following are actions prosecutors can take to safeguard victims and provide notice that respondents will be held accountable in any jurisdiction in which they violate a protection order. They are not, however, a prerequisite for enforcement.

- Provide oral notice to the parties that the order is enforceable in all 50 states, U.S. territories, tribal lands, and the District of Columbia.
- Inform the parties that violation of the order and/or possession of a firearm, in addition to any state or tribal sanctions, may subject the respondent to prosecution for federal crimes.
- Have the respondent, if present, sign an acknowledgment of service on the face of the order.
- Provide the protected party with the number for the National Domestic Violence Hotline (800/799-SAFE, TTY 800/787-3224).

- Ensure that the victim is provided with certified copies of the order and advise the victim to carry at least one copy at all times.
- Request that the court enter the protection order into a registry.
- Suggest that a certified copy of the protection order be delivered to law enforcement agencies in jurisdictions where the victim lives, is employed, and any other jurisdiction where travel by the victim is anticipated.

ENFORCEMENT OF PROTECTION ORDERS ISSUED BY OTHER JURISDICTIONS*

Charging

- Charge the defendant with the same criminal offenses that apply to violations of orders issued within your jurisdiction. If the law of your jurisdiction restricts prosecutions to violations of orders from your jurisdiction only, remember that VAWA supercedes those statutory provisions under federal preemption.
- Include an averment in the charging complaint demonstrating that the defendant was afforded due process (e.g., attach the order or an affidavit of service obtained from the issuing jurisdiction, if legally permissible in your jurisdiction).
- Charge the defendant with any other applicable crimes (e.g., stalking, trespass, harassment, firearm prohibitions, etc.). These charges can sometimes be pursued instead of violations of the protection order, but be sure to avoid double jeopardy issues if you pursue multiple charges.
- Consider referring the case to federal prosecutors if federal statutes have been violated. See pages 9–11 for the federal domestic violence and stalking crimes statutes and p. 7 for information on coordinating with federal counterparts.
- Verification is not required under federal law; however, if the terms or status of the order are not clear or if your jurisdiction requires it at this stage, verify the terms or status of a protection order by accessing the appropriate state or tribal registry or the NCIC Protection Order File. Do not rely solely on the NCIC system, because it does not contain orders

from all jurisdictions. If the registries do not provide the necessary information, use traditional methods, such as contacting law enforcement or the clerk of court in the issuing jurisdiction. These steps may also be necessary for corroboration of the allegations sufficient to support your charging document.

Preliminary Arraignment/Bail Hearing

- Enhanced protection for victims can be achieved by a request for high bail.
- Conduct a lethality/dangerousness assessment with the victim and provide information on the defendant’s risk factors to substantiate the need for high bail (see box, next page).
- Check outstanding warrants and previous arrests, charges, or convictions for protection order violations and other domestic violence-related offenses.
- After consulting with the victim, seek bail provisions or conditions of release that prohibit contact with the victim, departure from the enforcing jurisdiction, or possession of firearms.
- Keep in mind that the defendant may present an increased flight risk because of the defendant’s willingness to violate a protection order – particularly because the violation extended across jurisdictional lines. This demonstrates a clear disregard for the mandates of the court that issued the protection order, and therefore the defendant may be likely to disregard the enforcing court’s mandate to return at a future date.

** The information in this section is adapted from “Domestic Violence Full Faith and Credit: Protection Orders” by Barbara Hart, Mary Malefyt, and Seema Zeya, published in The Practical Prosecutor, Spring 2000 (reprint permission granted by the National College of District Attorneys).*

Using Lethality Assessments

The periods of time immediately after the victim leaves the relationship, after issuance of a protection order, and after a defendant is released from custody are often the most dangerous for victims. Additionally, abusers and stalkers who pursue victims across jurisdictional lines pose elevated risks of severely injurious and lethal violence. Prosecutors and victim-witness specialists should assess whether any of the following risk factors are present and include them in bail/bond and sentencing memoranda, if the bail statute for the jurisdiction allows elevated threat to be considered in a bail argument.

- separation of the parties
- threats of homicide/suicide
- possession of or access to weapons
- prior use, attempted use, or threatened use of weapons
- stalking behavior
- obsessive or desperate attachment to victim
- destruction of victim's property
- history of domestic violence and violent criminal conduct
- drug or alcohol involvement
- depression or other mental illness
- abuse of children
- abuse of animals

Trial

Before offering proof of the protection order violation, present a prima facie case of the order's enforceability (i.e., the issuing court had jurisdiction over the parties and the subject matter and the defendant was provided with notice and an opportunity to be heard, or, in the case of an ex parte order, the defendant had notice of the order and a hearing is scheduled within a reasonable period of time). If the face of the order does not recite these full faith and credit requirements adequately, or if your jurisdiction requires this:

- Obtain the necessary records from the issuing court, including affidavits of service and transcripts of the protection order proceeding. Your jurisdiction may require certified or authenticated copies of these documents.
- Even if proper service cannot be established, the issuing jurisdiction's statutes or case law may indicate that actual notice of the order's terms is sufficient. If so, consider having the victim testify that the defendant knew about the order and its provisions (e.g., the victim told the defendant to stop calling because the order prohibits any contact).

Sentencing

Advocate for sentences that promote victim safety and offender accountability by:

- Educating the court about the specific risk posed by the defendant and the protections necessary to safe-

guard against further violence (use information obtained during the lethality/risk assessment);

- Informing the court of the defendant's prior crimes (including protection order violations) against the victim and others; and
- Permitting the victim to make an impact/risk statement and request specific protections and compensation during sentencing.

Post-Sentencing Follow-Up

- Notify the issuing court of the final disposition of the criminal enforcement proceeding.
- Notify the victim prior to the defendant's release from incarceration or upon suspension or completion of the sentence.
- Provide the victim with a copy of the order outlining the conditions of release.
- Discuss with the victim the enforcement requirements in jurisdictions where the victim frequently travels.

FULL FAITH AND CREDIT FOR PROTECTION ORDERS

Crafting an Enforceable Order and Facilitating Protection

For prosecutors involved in developing forms or petitioning for protection orders, ensure that all orders:

- Reflect compliance with VAWA’s full faith and credit provision (18 U.S.C. § 2265).
- Cite the state/tribal statute upon which the court’s decision and order are based.
- State the duration and expiration date of the order.
- Include all identifying information required for the state/tribal registry and the NCIC Protection Order File.
- Provide notice of the federal domestic violence and stalking crimes (18 U.S.C. §§ 2261, 2261A, and 2262) and the federal firearm statutes (18 U.S.C. §§ 922(g)(8)–(9)).

Facilitate protection for the victim by:

- Providing oral notice to the parties that the order is enforceable throughout the U.S.
- Informing the parties that violation of the order and/or possession of a firearm may subject the respondent to federal prosecution.
- Having the respondent sign an acknowledgment of service on the face of the order.
- Ensuring the victim has certified copies of the order and reminding the victim to carry one copy at all times and suggesting that one copy be delivered to law enforcement agencies in jurisdictions where the victim lives, works, or anticipates visiting.

Enforcing a Protection Order Issued in Another Jurisdiction

Pursuant to the federal full faith and credit provision of the Violence Against Women Act (18 U.S.C. § 2265), for a protection order to be enforceable in a jurisdiction other than where it was issued, it must meet the following conditions:

- The court that issued the order must have had personal and subject matter jurisdiction. 18 U.S.C. § 2265(b)(1).
- The respondent must have had notice and an opportunity to be heard sufficient to protect that person’s right to due process. 18 U.S.C. § 2265(b)(2).

- In the case of ex parte orders, notice and an opportunity to be heard must be provided to the respondent within the time required by the issuing jurisdiction’s law, or, in any event, within a reasonable period of time.

The federal statute also provides the following:

- Orders issued against both parties are not enforceable against the petitioner unless the respondent filed a cross- or counter-petition for a protection order and the judge made specific findings that each party was entitled to such protection.
- Protection orders must be enforced notwithstanding any failure on the part of the victim to comply with the enforcing jurisdiction’s registration or filing requirements.
- Notice may not be sent to the respondent upon registration/filing of a protection order issued in another jurisdiction unless the petitioner requests it.
- Indian tribal courts have jurisdiction to use their civil powers to enforce protection orders against non-Indians through civil contempt, exclusion, or other means.

Charging Decisions

- Charge the defendant with the same criminal offenses that apply to violations of orders issued within your jurisdiction.
- Include an averment in the charging complaint demonstrating that the defendant was afforded due process, if legally permissible in your jurisdiction.
- Charge the defendant with any other applicable crimes.
- Consider referring the case to federal prosecutors if federal statutes have been violated, such as the federal domestic violence and stalking crimes (18 U.S.C. §§ 2261, 2261A, and 2262) or the firearm statutes (18 U.S.C. §§ 922(g)(8)–(9)). Each U.S. Attorney’s Office has a designated Violence Against Women Act point of contact. The contact information is:

- Verification is not required under federal law; however, if the terms or status of the order are not clear or if your jurisdiction requires it at this stage, verify the terms or status of a protection order by accessing the appropriate state or tribal registry or the National Crime Information Center (NCIC) Protection Order File, or by contacting law enforcement or the clerk of court in the issuing jurisdiction.

Preliminary Arraignment/Bail Hearing

- Provide risk factors from a lethality assessment to substantiate the need for high bail.
- Consider arguing that the defendant poses an increased flight risk because of the defendant's willingness to violate the issuing court's protection order, especially because the violation extended across jurisdictional lines.
- Check for warrants, arrests, charges, and convictions in your jurisdiction, the issuing jurisdiction, and all other jurisdictions.
- After consulting with the victim, seek prohibitions in bail or conditions of release that prohibit contact with the victim, leaving the jurisdiction, and possession of firearms.

Trial Preparation

Before offering proof of the protection order violation, present a prima facie case of the order's enforceability. If the face of the order does not adequately recite the full faith and credit requirements, or if your jurisdiction requires this:

- Obtain the necessary records from the issuing court, including affidavits of service and transcripts of the protection order proceeding.
- Even if proper service cannot be established, consider having the victim testify that the defendant knew about the order and its provisions.

Sentencing

Advocate for sentences that promote victim safety and offender accountability by:

- Providing information to the court about the specific risk the defendant poses and the kinds of safeguards that are necessary;
- Informing the court of the defendant's prior crimes; and
- Permitting the victim to make an impact/risk statement and request specific protections and compensation.

Post-Sentencing Follow-Up

- Notify the issuing court of the final disposition.
- Notify the victim prior to the defendant's release and completion of the sentence.
- Provide the victim with a copy of the order outlining the conditions of release.
- Discuss with the victim the enforcement requirements in jurisdictions where the victim plans to travel.

Technical Assistance on Full Faith and Credit Implementation and Other Domestic Violence and Stalking Resources

Full Faith and Credit

National Center on Full Faith and Credit
(800) 256-5883, ext. 2
(202) 265-0967, ext. 2

Domestic Violence and the Civil and Criminal Legal Systems

Battered Women's Justice Project
Civil: (800) 903-0111, ext. 2 or (717) 671-4767
Criminal: (800) 903-0111, ext. 1 or (612) 824-8768

Custody Issues

Family Violence Department of the National Council of Juvenile and Family Court Judges
(800) 527-3223 or (775) 784-6012

Stalking Issues

Stalking Resource Center of the National Center for Victims of Crime
(202) 467-8700

National Resource Center on Domestic Violence

(800) 537-2238 or (717) 545-6400
Mending the Sacred Hoop – Technical Assistance Project
(888) 305-1650 or (218) 722-2781

Immediate Assistance for Victims of Domestic Violence

National Domestic Violence Hotline
(800) 799-SAFE or (512) 453-8117
TTY (800) 787-3224
(24 hours, for referral to state and local programs)

ISSUES FOR CONSIDERATION BY PROSECUTORS WHEN A PROTECTION ORDER IS VIOLATED ON TRIBAL LAND

When a protection order is violated on tribal land, a tribal prosecutor must analyze various issues, including the status of the victim, the offender, and the offense committed in order to determine how to proceed. The following represents some of the issues that should be considered.

- **If the protection order was violated on tribal land located within a Public Law 280 state, the state has jurisdiction to prosecute if the offense constitutes a crime under state law.**

Tribal courts have concurrent jurisdiction. For the six mandatory P.L. 280 states (Alaska (except Metlakatla criminal jurisdiction), California, Minnesota (except the Red Lake Reservation), Nebraska, Oregon (except the Warm Springs Reservation), and Wisconsin), the federal courts do not have jurisdiction over offenses in the Major Crimes Act (18 U.S.C. § 1153), but in non-mandatory states, state and federal courts have concurrent jurisdiction over conduct falling under the Major Crimes Act and the General Crimes Act (18 U.S.C. § 1152). In all cases, the federal courts retain jurisdiction over federal crimes of general applicability (e.g., the federal domestic violence crimes, 18 U.S.C. §§ 2261–2262).

- **If the protection order was violated on tribal land located within a non-Public Law 280 state, is the victim Indian or non-Indian? Is the offender Indian or non-Indian?**

- If both the victim and the offender are Indian, federal courts have jurisdiction to prosecute if the offense constitutes a crime under the Major Crimes Act, and tribal courts have concurrent jurisdiction. Tribal courts have jurisdiction over all other offenses.
- If the victim is non-Indian and the offender is Indian, federal courts have jurisdiction if the offense constitutes one of the crimes enumerated in the Major Crimes Act. Tribal courts have concurrent jurisdiction. If the offense constitutes a federal crime covered by the General Crimes Act

or is a state crime incorporated by the Assimilative Crimes Act (18 U.S.C. § 13), federal courts may still exercise jurisdiction, but only if the tribe has not yet punished the offender. A tribal court has exclusive jurisdiction over any other offense included in the tribal code.

- If the victim is Indian and the offender is non-Indian, the federal courts have jurisdiction over all offenses, including offenses that constitute crimes under the law of the state in which the tribal land is located, pursuant to the Assimilative Crimes Act.
 - If both the victim and the offender are non-Indian, state courts have jurisdiction over offenses that constitute violations of state law, and the federal government has jurisdiction over offenses constituting crimes under federal law.
 - **If the tribe has criminal jurisdiction over the offender, consider whether:**
 - Violation of a protection order constitutes a crime under the tribal code.
 - Violation of another jurisdiction's protection order constitutes a crime under the tribal code.
 - The offender may be prosecuted for another offense under the tribal code.
 - A referral to the U.S. Attorney's Office should be made for a possible violation of one or more of the federal domestic violence crimes or the federal firearms statutes.
- For model tribal code provisions addressing prosecution for violation of protection orders issued by other jurisdictions, contact the National Center on Full Faith and Credit at (800) 256-5883, ext. 2.*
- **Since tribes do not have criminal jurisdiction over non-Indian offenders, consider asking the tribal court to exercise its civil powers by holding the offender in contempt or excluding the offender from tribal land (18 U.S.C. § 2265(e)).**

The following chart provides an overview of the authority of tribes, states, and the federal government to prosecute for offenses occurring on tribal land.* Pertinent portions of the statutes cited in the chart are provided below.

Offender	Victim	Crime	Jurisdiction	P.L. 280 States
Indian	Indian	Felonies listed in the Major Crimes Act (18 U.S.C. § 1153)	Federal (tribal courts have concurrent jurisdiction)	State jurisdiction over all state law offenses; federal jurisdiction over all federal law offenses (e.g., federal domestic violence crimes, 18 U.S.C. §§ 2261–2262). Tribal courts have concurrent jurisdiction with the states. Federal courts do not have jurisdiction over Major Crimes Act offenses in the six mandatory P.L. 280 states; federal and state courts have concurrent jurisdiction over Major Crimes Act offenses in non-mandatory states.
		All other crimes (misdemeanors and felonies not falling under the Major Crimes Act)	Tribal	
Indian	Non-Indian	Felonies listed in the Major Crimes Act (18 U.S.C. § 1153)	Federal (tribal courts have concurrent jurisdiction)	
		Other felonies	Tribal; federal courts may exercise jurisdiction, but only if the tribe has not punished the offender. (General Crimes Act/Indian Country Crimes Act (18 U.S.C. § 1152); Assimilative Crimes Act (18 U.S.C. § 13))	
		Misdemeanors	Tribal	
Non-Indian	Indian	Any felony or misdemeanor	Federal jurisdiction for all offenses, including state law offenses incorporated by the Assimilative Crimes Act (18 U.S.C. § 13); no tribal jurisdiction	
Non-Indian	Non-Indian	State law offenses	State	
		Federal law offenses	Federal	

General Crimes Act (sometimes called the Indian Country Crimes Act). 18 U.S.C. § 1152.

Laws Governing. “Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country. This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.”

Major Crimes Act. 18 U.S.C. § 1153. Offenses committed within Indian country. “(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual who has not attained the age of 16 years, arson, burglary, robbery, and a felony

under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States. (b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.”

Assimilative Crimes Act. 18 U.S.C. § 13. Laws of States adopted for areas within Federal jurisdiction.

“(a) Whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in section 7 of this title, or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, Commonwealth, territory, possession, or district is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force and at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.”

*This chart applies to offenses for which jurisdiction can be determined based on the “Indian country” location of the offense. In most cases, the federal government has jurisdiction to prosecute federal crimes of general application without regard to the status of the perpetrator or the victim.

Coordination: The Foundation for Effective Enforcement of Protection Orders

State and tribal prosecutors alone cannot ensure that protection orders—whether issued within their jurisdictions or elsewhere—will protect victims of domestic violence or that violators will be appropriately sanctioned. Law enforcement personnel, victim-witness specialists, community-based victim advocates, federal prosecutors, and court personnel all have critical roles to play, and state and tribal prosecutors must work closely with these individuals to safeguard victims against further violence and ensure that the system holds offenders accountable.

Law Enforcement

Prosecutors should work with law enforcement to establish uniform policies and procedures on the response to violations of protection orders issued within and outside their jurisdiction. Prosecutors should play a role in training law enforcement on their responsibilities under the policies and procedures, including:

- Responding properly at the scene of a domestic violence incident;
- Assessing whether a protection order is valid on its face;
- Verifying the status or terms of an order, when necessary; and
- Collecting evidence and referring cases for potential federal prosecution.

Victim-Witness Specialists

Prosecutors should assign victim-witness specialists to provide support and guidance to victims throughout the criminal justice process, including:

- Assisting in safety planning and lethality/dangerousness assessments;
- Informing the victim that the protection order is entitled to enforcement in every jurisdiction throughout the U.S.;
- Providing information on enforcement procedures in the jurisdiction where the order was violated and any other jurisdiction where the victim plans to be;
- Assisting in obtaining certified copies from the issuing jurisdiction should the victim wish to file/register the order in any jurisdiction; and
- Providing referrals to community-based victim services and legal services.

Community-Based Victim Advocates

Prosecutors should encourage victims to work with advocates from community-based victim service programs for assistance throughout the criminal proceedings and to address other needs related to the violence (e.g., divorce, custody, child care, housing, and employment). It is also helpful for

prosecutors to participate in meetings or cross-trainings with these programs about criminal procedures for protection order violations and how advocates and prosecutors can facilitate the process while protecting victim safety.

Federal Prosecutors

The fact patterns that give rise to cross-jurisdictional enforcement of protection orders may also support prosecution under federal law. Therefore, state and tribal prosecutors should become familiar with the federal domestic violence and stalking crimes and the firearm prohibitions and work with U.S. Attorneys' offices to develop a protocol for referring appropriate cases for federal prosecution.

Judges and Other Court Personnel

Prosecutors should educate judges and other court personnel on:

- The federal full faith and credit provision;
- Related state/tribal code provisions;
- The importance of enforcing protection orders from other jurisdictions; and
- The federal firearm prohibitions.

Prosecutors should work with court administrators to develop standardized protection order forms that:

- Indicate compliance with full faith and credit requirements;
- Provide notice to the parties that the order is enforceable in all other jurisdictions;
- State that violation of the order may subject the respondent to federal prosecution; and
- Provide notice of the federal firearm prohibitions.

Protection Order Registries

Prosecutors should coordinate with clerks of court, law enforcement, and others involved in filing/registration of protection orders to increase the accuracy of the registry's information and its utility as a verification tool by ensuring that:

- There are specific procedures that require timely entry of all protection orders into the protection order registry and the NCIC Protection Order File;
- There are quality-control mechanisms in place to check for missing data prior to entry into the registry and/or the NCIC Protection Order File (e.g., a numeric identifier for the respondent such as DOB or SS#);
- Data about the victim and other protected parties (e.g., residential and employment addresses) remain confidential;
- There are mechanisms in place that provide for a timely response to verification requests by other jurisdictions; and
- The registry allows the entry of protection orders issued in other jurisdictions, including relief that is not available in the entering jurisdiction.

Federal Firearm Prohibitions

18 U.S.C. § 922(g)(8)

It is unlawful for persons subject to qualifying protection orders to possess any firearm or ammunition in or affecting commerce, or to receive any firearm or ammunition that has been shipped or transported in interstate or foreign commerce.

What protection orders are covered under § 922(g)(8)?

Most protection orders are covered by the statute. However, there are specific criteria that must be met for a protection order to qualify. All of the following must be true:

- The person protected by the order is: (1) an intimate partner of the respondent; (2) a child of the respondent; or (3) a child of an intimate partner of the respondent. An intimate partner includes a spouse, former spouse, person with whom the respondent is cohabiting or has cohabited, or a parent of a child in common.
- The order was issued after a hearing and the respondent was provided with notice and an opportunity to be heard.
- The order restrains the respondent from harassing, stalking, or making threats against the intimate partner or child that would place the intimate partner in reasonable fear of bodily injury to the intimate partner or child.
- The order includes terms that explicitly prohibit the use, attempted use, or threatened use of physical force against an intimate partner or child that would reasonably be expected to cause bodily injury OR includes a finding that the respondent represents a credible threat to the physical safety of the intimate partner or child.

Important Features of § 922(g)(8)

Note that the statute:

- Applies to all firearms and ammunition;
- Applies regardless of whether similar relief is included in the protection order;
- May cover orders issued pursuant to a consent agreement, if the respondent was provided with an opportunity to be heard, and all other elements of the statute have been met (contact the U.S. Attorney's

office with questions about whether a particular order qualifies); and

- Provides an exemption for official use of firearms by military and law enforcement personnel while on duty.

18 U.S.C. § 922(g)(9)

Persons who have been convicted of a qualifying misdemeanor crime of domestic violence² are prohibited from possessing any firearm or ammunition in or affecting commerce, shipping or transporting in interstate or foreign commerce, and receiving any firearm or ammunition that has been shipped or transported in interstate or foreign commerce.

Which crimes qualify under § 922(g)(9)?

For a crime to qualify under § 922(g)(9), all of the following criteria must be met:

- The crime constituted a violation of either federal or state law;
- The crime had as an element the use or attempted use of physical force or threatened use of a deadly weapon;
- The accused was represented by counsel or made a knowing and intelligent waiver;
- If entitled to a jury trial, the case was tried by a jury or the defendant made a knowing and intelligent waiver; and
- The offense 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.

Important Features of § 922(g)(9)

Note that the statute:

- Applies to qualifying convictions that occurred both before and after the statute's effective date and
- Carries no official-use exemption for law enforcement or military personnel.

² Persons convicted of felonies (including felony domestic violence crimes) are prohibited from possessing or purchasing firearms under 18 U.S.C. § 922(g)(1).

Full Faith and Credit Provision of The Violence Against Women Act 18 U.S.C. §§ 2265–2266

§ 2265. FULL FAITH AND CREDIT GIVEN TO PROTECTION ORDERS

(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 PRE-REQUISITE 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. DEFINITIONS [This section applies to sections 2265, 2261, 2261A, and 2262.]

In this chapter:

(1) BODILY INJURY.—The term “bodily injury” means any act, except one done in self-defense, that results in physical injury or sexual abuse.

(2) COURSE OF CONDUCT.—The term “course of conduct” means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose.

(3) ENTER OR LEAVE INDIAN COUNTRY.—The term “enter or leave Indian country” includes leaving the jurisdiction of 1 tribal government and entering the jurisdiction of another tribal government.

(4) INDIAN COUNTRY.—The term “Indian country” has the meaning stated in section 1151 of this title.

(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.

(6) SERIOUS BODILY INJURY.—The term “serious bodily injury” has the meaning stated in section 2119(2).

(7) SPOUSE OR INTIMATE PARTNER.—The term “spouse or intimate partner” includes—

(A) for purposes of—

(i) sections other than 2261A, a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; and

(ii) section 2261A, a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; and

(B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.

(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.

(9) TRAVEL IN INTERSTATE OR FOREIGN COMMERCE.—The term “travel in interstate or foreign commerce” does not include travel from 1 State to another by an individual who is a member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member.

Federal Domestic Violence Crimes

18 USCS §§ 2261–2262

§ 2261. INTERSTATE DOMESTIC VIOLENCE

(a) OFFENSES.

(1) TRAVEL OR CONDUCT OF OFFENDER.—A person who travels in interstate or foreign commerce or enters or leaves Indian country with the intent to kill, injure, harass, or intimidate a spouse or intimate partner, and who, in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that spouse or intimate partner, shall be punished as provided in subsection (b).

(2) CAUSING TRAVEL OF VICTIM.—A person who causes a spouse or intimate partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse or intimate partner, shall be punished as provided in subsection (b).

(b) PENALTIES. A person who violates this section or section 2261A shall be fined under this title, imprisoned—

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A [18 USCS §§ 2241 et seq.] if the offense would constitute an offense under chapter 109A [18

USCS §§ 2241 et seq.] (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case, or both fined and imprisoned.

§ 2261A. INTERSTATE STALKING

Whoever—

(1) travels in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, that person, a member of the immediate family (as defined in section 115) of that person, or the spouse or intimate partner of that person; or

(2) with the intent—

(A) to kill or injure a person in another State or tribal jurisdiction or within the special maritime and territorial jurisdiction of the United States; or

(B) to place a person in another State or tribal jurisdiction, or within the special maritime and territorial jurisdiction of the United States, in reasonable fear of the death of, or serious bodily injury to—

(i) that person;

(ii) a member of the immediate family (as defined in section 115) of that person; or

(iii) a spouse or intimate partner of that person;

uses the mail or any facility of interstate or foreign com-

merce to engage in a course of conduct that places that person in reasonable fear of the death of, or serious bodily injury to, any of the persons described in clauses (i) through (iii);

shall be punished as provided in section 2261(b).

§ 2262. INTERSTATE VIOLATION OF PROTECTION ORDER

(a) OFFENSES.

(1) TRAVEL OR CONDUCT OF OFFENDER.—A person who travels in interstate or foreign commerce, or enters or leaves Indian country, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

(2) CAUSING TRAVEL OF VICTIM.—A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order

that prohibits or provides protection against violence, threats or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b).

(b) Penalties.—A person who violates this section shall be fined under this title, imprisoned—

(1) for life or any term of years, if death of the offender's spouse or intimate partner results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the offender's spouse or intimate partner results;

(3) for not more than 10 years, if serious bodily injury to the offender's spouse or intimate partner results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A if the offense would constitute an offense under chapter 109A (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case, or both fined and imprisoned.

Technical Assistance on Full Faith and Credit Implementation and Other Domestic Violence and Stalking Resources

Full Faith and Credit

National Center on Full Faith and Credit
(800) 256-5885, ext. 2
(202) 265-0967, ext. 2

Domestic Violence and the Civil and Criminal Legal Systems

Battered Women's Justice Project
Civil: (800) 903-0111, ext. 2 or (717) 671-4767
Criminal: (800) 903-0111, ext. 1 or (612) 824-8768

Custody Issues

Family Violence Department of the National Council of Juvenile and Family Court Judges
(800) 527-3223 or (775) 784-6012

Stalking Issues

Stalking Resource Center of the National Center for Victims of Crime
(202) 467-8700

National Resource Center on Domestic Violence

(800) 537-2238 or (717) 545-6400

Mending the Sacred Hoop – Technical Assistance Project

(888) 305-1650 or (218) 722-2781

Immediate Assistance for Victims of Domestic Violence

National Domestic Violence Hotline
(800) 799-SAFE or (512) 453-8117
TTY (800) 787-3224
(24 hours, for referral to state and local programs)



As prosecutors, although the most important aspect of your job involves holding offenders accountable for their actions, you must also assist in making victims whole. While these objectives are crucial in any criminal case—and most especially violent crimes—they are even more apparent in those cases involving domestic violence. The full faith and credit provision of the Violence Against Women Act has as its main purpose the safety and protection of victims of domestic violence by making orders of protection enforceable across state, territorial, and tribal lines. It is imperative that all prosecutors be familiar with this law and the procedures necessary for enforcement and prosecution of violations of these orders. This pamphlet serves as an excellent resource on the fundamental requirements of the law as well as helpful strategies to assist prosecutors in assisting victims and holding offenders accountable for their violent actions. I hope you find this a useful resource in your daily battle to ensure justice for victims of these horrific acts of violence.

Robert S. Fertitta
Dean
National College of District Attorneys



Office on Violence Against Women

With its mandate for nationwide enforcement of protection orders, the Violence Against Women Act affords important and often lifesaving protection for victims of domestic violence. As prosecutors, you play a critical role in ensuring that protection orders are enforced and that victims who cross jurisdictional lines—whether to go to work, visit friends and relatives, or seek safe haven—are safe. I thank you for your continued efforts to stop domestic violence and save lives.

Diane M. Stuart
Director
Office on Violence Against Women

This project was supported by Grant No. 96-VF-GX-K005 awarded by the Office on Violence Against Women, Office of Justice Programs, U.S. Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.