



FIREARMS

PROTECTION ACROSS JURISDICTIONS

VICTIM & CHILD SAFETY

**FULL FAITH & CREDIT
A JUDGE'S BENCH CARD**

A PASSPORT TO SAFETY



FAMILY LAW DEPARTMENT

VIOLENCE AGAINST WOMEN ACT

AMENDED

2005

Petitioner (your name) _____

v. Respondent (person to be restrained) _____

TO THE RESPONDENT: VIOLATION OF THIS RESTRAINING ORDER MAY RESULT IN YOUR ARREST, REVIEW THIS ORDER CAREFULLY. EACH PROVISION MUST BE OBEYED.

IT IS HEREBY ORDERED THAT:

Petitioner: _____ Respondent is restrained from molesting, interfering with or menacing petitioner and the minor child in petitioner's custody

_____ Respondent is restrained from entering (full name and address):

_____ Petitioner's residence* _____

_____ Petitioner's business or place of employment _____

_____ Petitioner's school _____

_____ Location of daycare provider for the children* _____

_____ The children's school or removing them from the school premises*
*EXCEPT for visitation periods provided for in the attached VISITATION ORDER or other ORDER establishing visiting rights.

_____ Other _____

_____ Telephone calls _____

_____ Respondent shall move from and not return to the residence located at: _____
except with a sheriff/peace officer in order to remove the following personal effects of the respondent, or if the respondent is the legal custodian, the following essential personal effects of respondent's _____
both: clothing, diapers, medications, social security card(s), _____
identification, tools of trade.

_____ Judge _____

RIGHTS AS A PART RETURN TO

Northern Mariana Islands

Alaska

Hawaii

Puerto Rico

Guam

U.S. Virgin Islands

American Samoa

What is the Violence Against Women Act (VAWA)?

Enacted in 1994, and amended in 2000 and 2005, VAWA recognizes the severity of domestic violence, sexual assault, stalking, and dating violence to women, families, and society as a whole and provides federal funding to help communities address the needs of survivors and hold offenders accountable.

What is the Full Faith and Credit Provision of VAWA?

The Full Faith and Credit provision of VAWA requires every jurisdiction in the United States to recognize and enforce valid protection orders issued in any jurisdiction in the United States (see 18 U.S.C. § 2265(a) on the Back Cover).

What is a Protection Order under VAWA?

Under VAWA, a protection order is broadly defined to include “any injunction, restraining order, or any other order issued by a civil or criminal court” for the purpose of preventing violence and includes “any support, child custody or visitation provisions, orders, remedies, or relief issued as part of a protection order pursuant to state, tribal, territorial, or local law” (see 18 U.S.C. § 2266(5) on the Back Cover for the full definition).

Please Note: The terms “protection order” and “order” are used interchangeably on these bench cards to refer to orders issued by civil and criminal courts.

What is the Intent of Full Faith and Credit?

For Judges

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

For Victims

- Provides cross-jurisdictional protection afforded by valid protection orders.

For Abusers

- Provides cross-jurisdictional accountability for violation of valid protection orders.

For Law Enforcement

- Requires enforcement of valid protection orders they may encounter from other jurisdictions.

What may Qualify under Full Faith and Credit?

Any state, tribal, or local court order enjoining one person from threatening, harming, harassing, stalking, approaching, or contacting another person, including a victim and the family members of the victim, so long as the enjoined person had or will have notice and an opportunity to be heard. These may include:

- Temporary, *ex parte*, or final protection orders (see Enforcing Court card).
- Child custody, visitation, and support provisions contained within a protection order (see Child Custody, Visitation, and Support Provisions Within Protection Orders cards).
- Bond orders and pre-trial release orders.
- Orders issued as a condition of diversion, alternative sentencing, probation, or parole.

- Temporary and final protection orders issued as part of divorce, custody, or other family law proceedings.
- Peace orders (a court order offering protection from abuse to certain classes of persons who are not eligible to petition for a protection order) issued to prevent violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to another person.
- Consent orders issued in domestic violence cases (provided the orders meet the qualifying elements of notice and opportunity to be heard).
- Juvenile court orders.
- Alternative dispute resolution, mediation, and collaborative law orders that are signed by a judge and that have the requisite elements (i.e., notice and an opportunity to be heard, and issued to prevent violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to another person).
- Elder abuse protection orders and guardianship orders.

Please Note: Mutual orders issued by a state, tribal, or local court, which provide relief against the original petitioner as well as the respondent, are generally entitled to full faith and credit only against the respondent and are generally *not* enforceable against the original petitioner (see Mutual Orders on the Issuing Court and Enforcing Court cards).

What are No-Cost Provisions?

Courts should not charge a victim of domestic violence, dating violence, stalking, or sexual assault any costs associated with the filing, issuance, registration, or service of protection orders, whether issued by civil or criminal courts, including intra- and inter-jurisdictional orders. This no-cost provision also applies to any fees or costs associated with a criminal matter related to domestic violence, stalking, dating violence, and sexual assault (42 U.S.C. § 3796 hh(c)(4)). Charging any of these costs will render a jurisdiction ineligible for certain VAWA funds. For more information on no-cost provisions, see Frequently Asked Questions on STOP Formula Grants available at http://www.ovw.usdoj.gov/docs/FAQ_FINAL_nov_21_07.pdf.

How can I Create a Safe Climate in the Judicial System?

- Provide leadership to ensure the establishment of clearly defined, user-friendly procedures for processing requests for issuance and enforcement of protection orders and incorporate the procedures into regular training.
- Provide protected parties with the National Domestic Violence Hotline number ((800) 799-SAFE, TTY (800) 787-3224) and information on local victim services.
- Participate in your local community coordinated response to develop user-friendly forms for issuance and enforcement of protection orders.
- Provide information on the face of protection orders 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.

How can I make my orders easier to enforce?

The issuing court determines who is restrained, the duration of the restraint, the relief that is available, and the conduct that is prohibited or required.

Crafting an Enforceable Order

- Use clear and concise language in a legible order.
- Avoid vague and unenforceable terms such as “reasonable.” For example, in orders involving no contact or stay away provisions, include, when appropriate, the exact distance that a respondent must stay away.
- Do not leave important terms of the order “upon the agreement of the parties.” For example, when crafting visitation provisions, be precise about times and location, including relevant addresses, persons, and duration. When prohibiting contact or communication, provide specific examples of the prohibited activities (e.g., using telephone, fax machine, electronic mail, and third-party contacts).
- Be sure that law enforcement can easily read, understand, and identify enforceable provisions in the order.
- Indicate on the face of the order that the respondent had or will have notice and an opportunity to be heard within the time required by the law of the issuing jurisdiction. It is good practice to have the respondent, if present, sign an acknowledgment of service on the order.
- Make a written finding that the court has personal and subject matter jurisdiction to issue the protection order.
- Make specific written findings of abuse and indicate that the abuse meets the statutory standards for issuance of a protection order.
- State the order’s expiration date, if any, or state that the order is a lifetime or permanent order.
- Cite the statute upon which the court’s decision and order are based. Where applicable, cite the statutory provision upon which specific relief is based (e.g., provisions providing for specific economic relief or catch-all provisions).
- Do not issue mutual orders (see Mutual Protection Orders below).



NOTE

***Mutual Protection Orders** are single orders that provide relief against the original petitioner, as well as the respondent. Such orders should not be issued. Instead, courts should require the respondent to file a separate petition or complaint for a protection order, make a specific finding that each party (including the respondent) is entitled to relief, and issue a separate order. Mutual orders are not entitled to full faith and credit against the petitioner except under very limited circumstances (see Enforcing Court card for details).*

Complying with Legal Requirements

- Do not notify the respondent that a protection order was registered or filed in your jurisdiction (18 U.S.C. § 2265(d)(1)).
- Do not post on a publicly available Internet site that a protection order has been registered, filed, or issued in your jurisdiction unless the petitioner so requests and does so on the record, orally or in writing (18 U.S.C. § 2265(d)(3)).

How do I facilitate inter-jurisdictional enforcement?

Facilitating Full Faith and Credit

- Indicate in writing or certify on the order that the order complies with VAWA's Full Faith and Credit provision (18 U.S.C. § 2265) and meets the protection order definition under 18 U.S.C. § 2266.
- State in the order that custody and visitation provisions within the order are enforceable under the federal full faith and credit provision. Also note compliance, where applicable, with the Uniform Child Custody Jurisdiction Act (UCCJA) or the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). State that any modifications to custody and visitation provisions must comply with those statutes, as well as the federal Parental Kidnapping Prevention Act (PKPA) (28 U.S.C. § 1738(A)) (see Issuing and Enforcing Child Custody, Visitation, and Support Provisions Within Protection Orders cards).
- Consult with the enforcing court, if requested, to clear up ambiguities, verify validity, and establish the status of service.
- Enter orders, as soon as possible, into the Protection Order File of the National Crime Information Center (NCIC POF) and all other accessible databases.
- Include in orders the typed name of the judge, the address and phone number of the court, and where available, the court's email contact information, the state protection order registry telephone number, and any other useful contact information for the court.
- Include language that explains how the current order adopts, modifies, overrules, or supersedes prior protection order provisions or orders from your or any other jurisdiction.

NOTE

Civilian orders are entitled to enforcement on military installations, but military orders are not entitled to enforcement in civilian courts (see 10 U.S.C. § 1561(a)) (see Military Protection Orders on inside cover).

What else should I do to facilitate protection?

Facilitating Protection

- Provide protected parties with certified copies of the order and suggest that they keep one with them at all times or that they talk to an advocate about the pros and cons of doing so.
- Include the required judicial notification regarding federal firearms laws (see Firearms card for further details regarding judicial notification and other firearms considerations).
- Inform the parties orally and in writing that the order is enforceable in all 50 states, U.S. territories, tribal lands, the District of Columbia, and on military installations without registration by the petitioner or notice of registration to the respondent.
- State that violation of the order, in addition to any state or tribal sanctions, may subject the respondent to prosecution for such federal crimes as:
 - Firearms or ammunition possession (see Firearms card for details);
 - Interstate travel to commit domestic violence (18 U.S.C. § 2261);
 - Interstate stalking (18 U.S.C. § 2261A); and
 - Interstate violation of a protection order (18 U.S.C. § 2262).
- Provide the protected party with the National Domestic Violence Hotline number ((800)799-SAFE, TTY (800)787-3224) and information on local victim services.

For technical assistance on adopting a generally recognizable first page for protection orders, please contact the National Center for State Courts/Project Passport at (800) 616-6160.

The enforcing jurisdiction uses its enforcement procedures to enforce the terms of the protection order as written by the issuing jurisdiction.

What is the source of my authority?

Full Faith and Credit

Since 1994, the VAWA's Full Faith and Credit provision (18 U.S.C. § 2265) has required every jurisdiction in the United States to recognize and enforce valid protection orders.

These jurisdictions include:

- A state and its political subdivisions;
- A tribal government;
- The District of Columbia; and
- A commonwealth, territory, or possession of the U.S. (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands).

Is the order enforceable?

What Are the Elements of an Enforceable Order?

A protection order from another jurisdiction that has these elements must be afforded a presumption of enforceability:

- The respondent has been given notice and an opportunity to be heard, or, in the case of an *ex parte* order, the respondent will be given notice and an opportunity to be heard within a reasonable time, consistent with the requirements of due process.
- The issuing court had personal and subject matter jurisdiction to issue the order.
- The order has not expired.

What terms must I enforce?

Enforcing Protection Orders of Other Jurisdictions

- Enforce the terms of the order as written by the issuing jurisdiction, even if the **enforcing jurisdiction** lacks authority to enter such terms, e.g.:
 - The category of protected persons would not be eligible for relief in the enforcing jurisdiction (e.g., dating partners, same-sex partners);
 - The order contains relief unavailable in the enforcing jurisdiction;
 - The order has a longer duration than provided for in the enforcing jurisdiction; or
 - The order calls for surrender of weapons and the enforcing jurisdiction has no such provision.
- Use the enforcement procedures of the **enforcing jurisdiction**.
 - Treat the violation as a criminal offense if it is criminalized in the enforcing jurisdiction.
 - Issue orders to take physical custody of children where provided for in the enforcing jurisdiction for custody violations.
 - Award attorney's fees if sought and if provided for in the enforcing jurisdiction.
 - Impose sanctions for violations as provided for in the enforcing jurisdiction.
- Do not notify the respondent or post on a publicly available Internet site that a protection order has been registered, filed, or issued in your jurisdiction unless the petitioner so requests, and does so on the record, orally or in writing (18 U.S.C. § 2265(d)(1) and (3)).
- Do not require registration/filing or notice of either as a prerequisite for enforcement of valid protection orders from other jurisdictions (18 U.S.C. § 2265(d)(1)).

What procedures should I apply?

What about orders against both parties?

Mutual Orders

Mutual orders, which provide relief against the original petitioner as well as the respondent, are fully enforceable against the respondent. Provisions against the petitioner are not entitled to interstate/tribal enforcement unless (a) a cross or counter petition, complaint, or other written pleading was filed by the respondent seeking such a protection order; and (b) the court made specific findings that each party was entitled to such an order.

What else should I do to facilitate protection?

Facilitating Protection

- Communicate with the issuing court to clear up ambiguities, verify validity, and establish the status of service if these issues are raised.
- Ensure that court clerks and staff are familiar with and comply with the provisions of VAWA/Full Faith and Credit and provisions of federal grant programs that prohibit charging filing and service fees, as well as other fees or costs, related to protection orders (see 42 U.S.C. § 3796 hh(c)(4)) (see Frequently Asked Questions on STOP Formula Grants available at http://www.ovw.usdoj.gov/docs/FAQ_FINAL_nov_21_07.pdf).
- Provide protected parties with the National Domestic Violence Hotline number ((800) 799-SAFE, TTY (800) 787-3224) and information on local victim services.
- Inform the issuing court of the disposition of any enforcement proceeding by filing a copy of the order with the issuing court.
- Initiate discussions with contiguous jurisdictions regarding procedures for cross enforcement of protection orders.

Are there firearms considerations?

Firearms

- See the Firearms card for further details regarding judicial notification and other firearms considerations.

ISSUING CHILD CUSTODY, VISITATION, AND SUPPORT PROVISIONS WITHIN PROTECTION ORDERS

Courts should act to protect the safety and welfare of the children and protected party.

Issuing Custody or Visitation Provisions

Where requested by the petitioner and where authorized by state law (state protection order statutes and/or child custody jurisdictional statutes), judges should include custody and visitation (parenting time) provisions within protection orders to protect the victim and children from abuse. Research has demonstrated the profound negative effects suffered by children who witness violence and coercive control by one parent toward another. Judges can help prevent or minimize this damage by awarding temporary custody to the non-abusive parent as part of a protection order.

State Protection Order Law

Protection order statutes in the vast majority of states authorize courts to grant temporary custody and visitation within a protection order. In the remaining states, courts should take other steps to protect the victim and children.

- ❑ Where explicitly authorized by the governing state protection order law, include custody and visitation provisions within protection orders that give the victim custody for the duration of the order and, where appropriate, eliminate or limit the respondent's contact with the children.
- ❑ If such authority is not explicitly granted by the protection order statute, invoke the statute's catch-all provision (e.g., "any other relief the court determines necessary to protect the petitioner and other household members") to include a provision in the protection order denying or limiting the respondent's access to children on a temporary basis.
- ❑ In the limited circumstances where there is no statutory authority to enter a provision related to custody of or visitation with the children by the respondent, provide the parties with information regarding the proper court from which to obtain a custody order.

Child Custody Jurisdictional Statute (UCCJEA)

In most cases, custody and visitation provisions within protection orders will also comply with the issuing state's version of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which is a separate source of authority to issue custody orders. The UCCJEA offers additional enforcement mechanisms that may not otherwise be available for custody orders within protection orders (see Enforcement Under UCCJEA on the Enforcing Child Custody, Visitation, and Support Provisions Within Protection Orders card). The court should take the following steps to determine whether the custody and visitation provisions are in compliance with the UCCJEA and to facilitate enforcement under that statute:

- ❑ Determine whether the custody and visitation provisions within a protection order satisfy the UCCJEA's notice, opportunity to be heard, and jurisdictional requirements. Under most circumstances, the jurisdictional requirement will be met because the issuing state is the home state or it has temporary emergency jurisdiction, as described below:
 - **Home State Jurisdiction:** If the issuing state is the home state at the time of filing for the protection order, or it was the home state within six months of filing and one parent remains in the state, the court would normally exercise home state jurisdiction under the UCCJEA. The UCCJEA defines the home state (in part) as the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding, which includes custody and visitation provisions issued in protection orders. ***This jurisdictional basis trumps other jurisdictional bases, except that another court may exercise temporary emergency jurisdiction for a limited period of time after communicating with the home state court as noted below.***
 - **Temporary Emergency Jurisdiction:** If the issuing state is not the home state (see above), the custody provision likely would be issued under this jurisdictional basis, which applies if the child is present in the issuing state and it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse. **Note:** Entry of a custody provision on this basis requires that the court communicate with the court in the home state (if a custody proceeding has been initiated there) to decide, among other things, how to resolve the emergency, how best to protect the parties and child, and the duration of the order.

What is the source of my authority to issue custody or visitation provisions in protection orders?

What can I do to facilitate enforcement when issuing custody or visitation provisions in protection orders?

ISSUING CHILD CUSTODY, VISITATION, AND SUPPORT PROVISIONS WITHIN PROTECTION ORDERS

What else can I do to facilitate enforcement when issuing custody or visitation provisions in protection orders?

Can I issue a protection order with custody or visitation provisions if a custody order is already in place?

Issuing
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- **Other Jurisdictional Bases Under the UCCJEA:** There are other jurisdictional bases under the UCCJEA when home state or temporary emergency jurisdiction is not applicable, including significant connection, more appropriate forum, and last resort jurisdiction.
- ❑ State clearly on the protection order that the custody or visitation provision has been issued in compliance with the UCCJEA's notice, opportunity to be heard, and jurisdictional requirements and indicate the applicable jurisdictional basis.

Facilitating Enforcement

- ❑ Explain to parties that custody and visitation provisions within protection orders are temporary and are not valid upon expiration of the protection order. If applicable, inform parties about where they can go to get a permanent custody and visitation order.
- ❑ State in the order that custody and visitation provisions within protection orders are enforceable under the full faith and credit provision and, where applicable, under the UCCJEA.
- ❑ Issue custody and visitation provisions that are specific and detailed:
 - State the children's names, dates of birth, and which child is covered by which provision;
 - State the type of custody the court is granting (legal vs. physical or both); and
 - State the nature of any visitation provisions, if visitation is allowed, including whether the visitation or exchange is to be supervised, and the place, time, length of stay, and how upcoming holidays and birthdays will be handled. Leave no detail to negotiation between the parents.

Addressing Custody/Visitation When There is a Pre-Existing Order

If a court of another state has issued a custody order (including a protection order with a custody provision), a court in a new state must consult its own state law, including the UCCJEA, to determine whether it may issue a new protection order with different custody or visitation terms. In general, the court in the new state would be authorized to enter a new protection order that includes modified custody and visitation provisions if the court finds that it has emergency jurisdiction under the UCCJEA.

- ❑ The requirements for emergency jurisdiction discussed above apply to such a modification proceeding, including the requirement that the court communicate with the original issuing court.
- ❑ The court should allow jurisdictional arguments to be made and ensure that it has jurisdiction before entering the new protection order.

If the court has jurisdiction to enter a new protection order that includes modified custody or visitation provisions, it should:

- ❑ Ensure that custody provisions within the protection order are consistent with the stay away provisions of the same order.
- ❑ Take judicial notice of all other existing court orders that relate to a family's custody and visitation rights and obligations; if the court's actions affect the terms of those other orders, reference those changes explicitly within the new order, noting whether the new order overrules, modifies, extends, or otherwise amends those other orders.
- ❑ Inform the parties that they may seek to modify the original order in the appropriate jurisdiction if they desire to make any changes in custody or visitation arrangements permanent.
- ❑ Communicate with the original issuing court, even when not specifically required under the statute, to discuss whether the issuing court still has jurisdiction, which court is the most convenient forum, and which court can provide the best protection for the at-risk parent or child.
- ❑ Provide copies of any new orders to the issuing court.

ENFORCING CHILD CUSTODY, VISITATION, AND SUPPORT PROVISIONS WITHIN PROTECTION ORDERS

How do I enforce custody or visitation provisions from other jurisdictions?

NOTE

Enforcing Custody or Visitation Provisions

Courts have two primary sources of authority for enforcing custody/visitation provisions within protection orders from other jurisdictions: the federal VAWA Full Faith and Credit provisions, as amended in 2005, and the enforcement provisions in Article 3 of the UCCJEA, which may provide additional enforcement mechanisms not available under full faith and credit provisions.

Enforcement Under VAWA 2005

The VAWA, as amended in 2005 (see 18 U.S.C. § 2266(5)(B)), directs courts to enforce “any support, child custody, or visitation provisions, orders, remedies, or relief issued as part of a protection order” provided the other requirements of the statute are satisfied (see What are the Elements of an Enforceable Order on the Enforcing Court card).

- Enforce custody and visitation provisions the same way as no contact or stay away provisions (i.e., finding the offender in contempt of court, determining that the violation constitutes a misdemeanor crime, or whatever other enforcement mechanisms the court may use, including, if permitted under state law, directing law enforcement to recover the child).
- Enforce custody and visitation provisions within protection orders as they are written by the issuing jurisdiction, even if the enforcing jurisdiction cannot make the specific custody or visitation order under its state law.
- Provide the issuing court with copies of any orders issued by the enforcing court during the enforcement process.

Enforce ex parte orders under VAWA's Full Faith and Credit provisions and state enabling legislation (see What are the Elements of an Enforceable Order on the Enforcing Court card); ex parte orders are not enforceable under the UCCJEA, which requires notice and an opportunity to be heard.

Enforcement Under the UCCJEA

If the custody and visitation provisions were issued in compliance with the UCCJEA, additional enforcement mechanisms are available to the court under that statute.

- Determine whether the custody and visitation provisions comply with the UCCJEA by assessing whether the issuing court had jurisdiction under one of the jurisdictional bases described herein (see Issuing Child Custody, Visitation, and Support Provisions Within Protection Orders card, side 1) and whether it met the statute's notice and opportunity to be heard requirements. If the order is in compliance, reference all statutory authorities when enforcing the custody or visitation terms within the protection order.
- Comply with the UCCJEA enforcement provisions that afford the other parent an opportunity to contest the validity of the order; validity can be challenged only on limited grounds and any findings of abuse may not be relitigated (see the official comments to the UCCJEA available at <http://www.nccusl.org>).
- Use the authority under the UCCJEA to issue a warrant to take physical custody of the child where appropriate in an emergency. This enforcement mechanism may not explicitly be available under the state's full faith and credit statute.

NOTE

In enforcement or modification actions, take steps to keep the victim's and children's address confidential under applicable state laws.

ENFORCING CHILD CUSTODY, VISITATION, AND SUPPORT PROVISIONS WITHIN PROTECTION ORDERS

What if the custody or visitation provision is unenforceable?

How do I enforce child support provisions?

NOTE

No Enforceable Custody or Visitation Provisions

Where a protection order is silent on custody or visitation or any such provisions are unenforceable under VAWA or the UCCJEA and resolution of the custody or visitation issues is integral to maintaining the safety of the victim and the children, the court should:

- Exercise jurisdiction under the state's protection order statute to issue a new protection order that includes custody or visitation provisions.
- Exercise emergency jurisdiction under the UCCJEA to issue a temporary custody order when the court does not have jurisdiction to enter a new protection order (if, for example, it lacks personal jurisdiction over the abuser). The court does not need to have personal jurisdiction over the other parent to issue a valid custody order under the UCCJEA.

Child Support Provisions

- Enforce the support provision as written.
- Be mindful that child support enforcement strategies may raise safety concerns for victims; consult with victims regarding their wishes. For example, steps may need to be taken to keep the victim's and children's address confidential under applicable state laws.
- Ask the parties to disclose if there are any pending or existing child support decisions in any other court and, if possible, check the issuing court's database or court records.

Child support provisions within protection orders are also enforceable under the Full Faith and Credit for Child Support Orders Act (28 U.S.C. § 1738B) and the state version of the Uniform Interstate Family Support Act (UIFSA). UIFSA provides additional enforcement mechanisms for such provisions, including direct income withholding.

For technical assistance on the subject matter addressed in these cards, please contact the Legal Resource Center on Violence Against Women at (301) 270-1550 or lrc@lrcvaw.org.

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What federal firearms prohibitions apply to protection orders?

What is a qualifying protection order?

NOTE

How do I facilitate enforcement?

Firearms Card
Side 1

State, tribal, or local firearms prohibitions may apply in addition to the federal prohibitions.

Gun Control Act (18 U.S.C. §§ 922(g)(8) and (d)(8))

- ❑ Persons subject to a qualifying court order are prohibited, while the protection order is in effect, from possessing any firearm or ammunition in or affecting commerce, as well as from shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition. Qualifying orders include both civil and criminal protection orders that meet the requirements described below (18 U.S.C. § 922(g)(8)).
- ❑ Under 18 U.S.C. § 922(d)(8), it is unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person is disqualified under 18 U.S.C. § 922(g)(8).
- ❑ The terms “firearm” and “ammunition” are defined broadly (18 U.S.C. §§ 921(a)(3) and (a)(17)(A)).
- ❑ The prohibition does not apply to official use of firearms by federal, state, and local government employees (including military or law enforcement personnel) while on duty (official-use exemption, 18 U.S.C. § 925(a)(1)).

Qualifying Civil or Criminal Protection Orders Under 18 U.S.C. § 922 (g)(8)

- ❑ A qualifying order must have been issued after the person subject to the order has had actual notice and an opportunity to participate.
- ❑ A qualifying order must restrain the person from:
 - Harassing, stalking, or threatening an intimate partner of the person, or a child of the person or of the intimate partner, **or**
 - Engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child.
- ❑ 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 threatened use of physical force against an intimate partner or child which would reasonably be expected to cause bodily injury.

***Definition of intimate partner:** current or former spouse, co-parent, or one who cohabits or has cohabited with the subject of the protection order (18 U.S.C. § 921(a)(32)). Note that this definition does not apply for purposes of the federal full faith and credit requirement, which does not require an intimate partner relationship between the respondent and the protected person.*

Facilitating Enforcement

- ❑ Include in civil and criminal protection orders:
 - The full names of the victim and offender and their relationship, if available.
 - A numeric identifier for the offender (date of birth, Social Security number, driver’s license number, or VIN number) to facilitate entry into the Protection Order File of the National Crime Information Center (NCIC POF).
 - Language demonstrating compliance with the 18 U.S.C. § 922(g)(8) requirements described above.
 - VAWA-mandated notification to the offender that federal firearms prohibitions may apply (see Judicial Notification section on Firearms card, side 4).
- ❑ Ensure that all orders are entered into the NCIC POF with the appropriate Brady (firearms) indicator. For in-depth information, see the National Center for State Court’s Judges Guide to the NCIC POF web course at http://www.ncsconline.org/D_ICM/freeresources/index.asp.

What federal firearms prohibitions apply to misdemeanor domestic violence convictions?

What is a qualifying domestic violence misdemeanor?



NOTE

How is cohabitation defined?

What does it mean to be similarly situated?

Gun Control Act (1996 Lautenberg Amendment) (18 U.S.C. §§ 922(g)(9) and (d)(9))

- ❑ Persons convicted of a qualifying misdemeanor crime of domestic violence are prohibited from possessing any firearm or ammunition in or affecting commerce, as well as from shipping or transporting any firearm or ammunition in interstate or foreign commerce, or receiving any such firearm or ammunition (18 U.S.C. § 922(g)(9)).
- ❑ Under 18 U.S.C. § 922(d)(9), it is unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person is disqualified under 18 U.S.C. § 922(g)(9).
- ❑ The prohibition:
 - Applies to qualifying convictions that occurred both before and after September 30, 1996 (the date of enactment).
 - Carries no official-use exemption for federal, state, or local government employees (including law enforcement or military personnel) (18 U.S.C. § 925(a)(1)).
 - Applies to misdemeanor domestic violence convictions by tribal courts (18 U.S.C. § 921(a)(33)(A)(i)).

Qualifying Domestic Violence Misdemeanors

- ❑ A qualifying domestic violence misdemeanor conviction must include the following elements (which should be noted as findings or conclusions of law in the judicial record of conviction, including in court colloquies, orders, or other records):
 - Constitutes a violation of federal, state, or tribal law;
 - Includes, as an element, either the use or attempted use of physical force or threatened use of a deadly weapon; and
 - Is 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 a spouse, parent, or guardian of the victim; or a person similarly situated to the spouse, parent, or guardian of the victim.
- ❑ 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.

In the United States v. Hayes, the United States Supreme Court clarified that a misdemeanor crime of domestic violence includes “an offense committed by a person who had a specified domestic relationship with the victim, whether or not the misdemeanor statute itself designates the domestic relationship an element of the crime” (United States v. Hayes, 555 U.S. ___, 129 S.Ct. 1079 (2009)).

- ❑ In the United States v. Costigan, the First Circuit Court of Appeals applied the following factors to determine whether the defendant was “cohabiting . . . with the victim as a spouse:” the length of the relationship; shared residence as indicated by spending the night and keeping one’s belongings at the residence; intimate relations; expectations of fidelity and monogamy; shared household duties; regularly sharing meals together; joint assumption of child care; providing financial support; moving as a family unit; joint recreation and socialization; and recognition of the live-in relationship by family and friends as indicated by visits to the residence (United States v. Costigan, 18 F. App’x 2 (1st Cir. 2001)).
- ❑ In the United States v. Cuervo, the Eighth Circuit Court of Appeals interpreted the phrase “similarly situated to the spouse . . . of the victim” to apply where there is an “intimate personal relationship” and no cohabitation (United States v. Cuervo, 354 F.3d 969 (8th Cir. 2004)), including a boyfriend-girlfriend relationship (Eibler v. Dep’t of Treasury, 311 F. Supp. 2d 618 (N.D. Ohio 2004)).

How do I facilitate enforcement of the prohibitions for a qualifying domestic violence misdemeanor conviction?

How should I manage the return of seized/relinquished firearms?

How should I manage the transfer of firearms?

Why must I provide notification of the federal firearms laws?

Facilitating Enforcement

- Note the nature of the relationship between the perpetrator and the victim (spouse, former spouse, guardian, co-parent, cohabitant or former cohabitant, or child) in the official court record.
- Note the required elements of the offense (use or attempted use of physical force; threatened use of a deadly weapon) as findings or conclusions of law in the court record, including colloquies or orders. This is especially important where the offense charged has multiple prongs, only one of which qualifies as a domestic violence misdemeanor (for example, an assault statute with two or more disjunctive elements, only one of which involves the use or attempted use of physical force).
- Respond promptly to inquiries from the FBI National Instant Criminal Background Check System (FBI NICS) or alternative state agencies regarding the nature and status of a domestic violence misdemeanor crime.

Return/Transfer of Firearms

Federal law prohibits the return of seized or relinquished firearms to persons who are disqualified. Courts that authorize the return to a disqualified person may be violating federal law. When a request to return firearms is made, courts should take the following steps:

- Do not permit the return of seized or relinquished firearms to persons subject to any state or federal prohibitions, including the federal prohibitions in 18 U.S.C. §§ 922(g)(8) and (g)(9).
- Request authorized personnel to search the relevant national crime information databases, including the NCIC POF and identification (fingerprint), criminal history, and wanted person records, to determine whether the respondent is subject to any existing state or federal firearm prohibitions (see 28 U.S.C. § 534(f)(1), which permits such use of the national databases).

If the prohibited person seeks to transfer firearms to a third party rather than relinquish them, take the following steps before permitting the transfer:

- Require the third party to appear before the court;
- Conduct a hearing and issue an order authorizing the transfer of firearms to the third party, where authorized by state law;
- Explain that the federal law prohibits constructive possession and that the prohibited person must not have access to the firearms;
- Determine whether the third party is subject to any state or federal prohibitions and, if so, forbid the transfer;
- Explain that the third party may be subject to federal prosecution if he or she transfers the firearms back to the prohibited person (18 U.S.C. §§ 922(d)(8) and (d)(9)); and
- Require the prohibited party and the third party to sign an acknowledgment form under oath and penalty of perjury indicating their understanding of the foregoing. To obtain a modifiable version of such a form, contact the ATF Division Counsel for your state (the correct field office information is available at <http://www.atf.gov/contact/field>).

VAWA 2005 STOP Grant Condition: Judicial Notification

- All states, territories, and many tribes receive VAWA grants to support coordinated services and justice system responses to domestic violence, dating violence, sexual assault, and stalking.
- VAWA 2005 requires recipients of STOP formula grants and grants to tribal governments to certify that their courts have adopted policies and practices to provide notification to domestic violence offenders about federal, state, tribal, territorial, and local laws that may limit the offender's possession or use of firearms.

What are suggested ways I can comply with the judicial notification requirement?

How can I provide judicial leadership on firearms and domestic violence?

- Courts or court-related personnel must provide such information to persons:
 - Subject to a protection order (see Qualifying Civil or Criminal Protection Orders Under 18 U.S.C. § 922(g)(8) on Firearms card, side 1); or
 - Convicted of a misdemeanor crime of domestic violence (see Qualifying Domestic Violence Misdemeanors on Firearms card, side 2).
- Courts or court-related personnel should provide this notification, orally or in writing, during:
 - Protection order hearings;
 - Juvenile or family court proceedings where a protection order may issue;
 - Arraignment;
 - Criminal trials; and
 - Post-trial criminal proceedings, including sentencing, probation, parole, and violation.

Suggested Notification Language To Be Used When Issuing Civil or Criminal Protection Orders

- As a result of this order, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition pursuant to federal law under 18 U.S.C. § 922(g)(8) and/or state, tribal, territorial, or local law. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.

Suggested Judicial Notification Language To Be Used For Domestic Violence Misdemeanors

- If you are convicted of a misdemeanor crime involving violence where you are or were a spouse, intimate partner, parent, or guardian of the victim, or are or were involved in another, similar relationship with the victim, it may be unlawful for you to possess or purchase a firearm, including a handgun or long gun, or ammunition, pursuant to federal law under 18 U.S.C. § 922(g)(9) and/or state, tribal, territorial, or local law. If you have any questions whether these laws make it illegal for you to possess or purchase a firearm, you should consult an attorney.
- Alternatively, courts may provide notification by distributing the brochure of the Bureau of Alcohol, Tobacco, and Firearms entitled, “Information Needed to Enforce the Firearm Prohibition: Misdemeanor Crimes of Domestic Violence” available at <http://www.fbi.gov/hq/cjisd/nics/mcdvbrochure.pdf>.

Opportunities for Judicial Leadership

Consider taking the following additional steps to improve your court’s and community’s ability to protect victims and others from firearms violence:

- Require respondents to surrender their firearms, ammunition, and firearms permits/licenses to a law enforcement agency where authorized by state law; use catch-all provisions (e.g., “any other relief the court deems necessary for the protection of the petitioner”) where specific authority is absent.
- Coordinate with the responsible law enforcement agency to ensure compliance with orders to surrender; specify in orders when, where, and how to surrender firearms; and issue a bench warrant upon being informed by the agency of non-compliance.
- Develop protection order petitions, forms, and informational brochures for petitioners that facilitate issuance and enforcement of firearms prohibitions.
- Convene or participate in an interdisciplinary task force to improve coordination among relevant state and federal agencies in enforcing domestic violence-related firearms laws.

For technical assistance regarding interdisciplinary task force efforts, please contact the NCJFCJ at (800) 527-3223.

Criminal Protection Orders

The full faith and credit provision applies to qualifying criminal protection orders. Criminal protection orders are generally issued as a condition of release, probation, or parole. There may be a lack of arrest authority in the enforcing jurisdiction. The enforcing court should enforce criminal orders if permitted under the jurisdiction's laws. If enforcement of the criminal protection order is not permitted, law enforcement should respond to underlying crimes committed in the local jurisdiction and should contact the issuing court, which will determine whether to seek extradition so that it can address the protection order violation.

Tribal Court Protection Orders

The full faith and credit provision applies to qualifying tribal court protection 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, exclusion from Indian lands, and other appropriate mechanisms (18 U.S.C. § 2265(e)). See below for technical assistance providers specializing in tribal court orders.

Military Protection Orders

VAWA does not address military protection orders or the enforcement of state court orders on military installations. Military protection orders do not meet VAWA requirements for full faith and credit. However, the Armed Forces Domestic Security Act, 10 U.S.C. § 1561(a), provides that civilian protection orders shall have the same force and effect on a military installation as such orders have within the issuing jurisdiction. There may be issues surrounding the service of civilian orders on military installations. State courts should develop agreements with local military installations concerning military service and enforcement of state court protection orders (see DOD Instruction Number 6400.06 (August 21, 2007) at <http://www.dtic.mil/whs/directives/corres/pdf640006p.pdf>).

Battered Immigrants

Battered immigrants face difficult challenges. VAWA offers some solutions, including immigration relief for victims in certain situations. Because the issues are technical and require expert consultation, courts should provide general information regarding resource referrals. In some cases it may be prudent to suggest the victim consult with an informed advocate and attorney before entering orders that may compromise the victim's safety or immigration status. See below for technical assistance providers specializing in immigration relief available to battered immigrants.

Please Note: To the extent needed, courts should provide language-appropriate interpreters who are trained in domestic violence for all parties.

ADDITIONAL ASSISTANCE AND INFORMATION

Assistance for Judges

National Council of Juvenile and Family Court Judges
(800) 527-3223
www.ncjfcj.org

National Center for State Courts

(800) 616-6164
www.ncsconline.org

Assistance on Full Faith and Credit

National Center on Protection Orders and Full Faith and Credit

Battered Women's Justice Project
(800) 903-0111, prompt 2
www.fullfaithandcredit.org

Assistance on Interstate Custody Matters

The Legal Resource Center on Violence Against Women
(301) 270-1550
www.lrcvaw.org

Assistance for Law Enforcement

International Association of Chiefs of Police
(800) 843-4227
www.theiacp.org

Assistance and Additional Information

Office on Violence Against Women
U.S. Department of Justice
(202) 307-6026
www.ovw.usdoj.gov

Assistance on Tribal Court Orders

American Indian Law Center, Inc.
(505) 277-5462
www.ailc-inc.org

Tribal Judicial Institute

(701) 777-6176
www.law.und.nodak.edu/tji

Sacred Circle: National Resource Center to End Violence Against Native Women

(605) 341-2050
www.sacred-circle.com

Southwest Center for Law and Policy

(520) 623-8192
www.swclap.org

The Tribal Law and Policy Institute

(323) 650-5467
www.tribalprotectionorder.org

Assistance for 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)
www.ndvh.org

Assistance on Immigration Matters

ASISTA
(515) 244-2469
www.asistahelp.org

18 U.S.C. §§ 2265 and 2266

Full Faith and Credit Provisions of the Violence Against Women Act, VAWA 2000, and VAWA 2005.

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, 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 or tribe.

(b) Protection Order.

A protection order issued by a State, tribal, or territorial court is consistent with this subsection if—

- (1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; 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, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(c) Cross or Counter Petition.

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—

- (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, Indian tribe, or territory according full faith and credit to an order by a court of another State, Indian tribe, or territory shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State, tribal, or territorial jurisdiction unless requested to do so by the party protected under such order.

(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, tribal, or territorial jurisdiction.

(3) Limits on Internet Publication of Registration Information.

A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order or injunction, in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes.

(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.

18 U.S.C. § 2266 (5) and (8) Definitions

(5) Protection Order.

(A) Any injunction, restraining order, or any other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a *pendente lite* order in another proceeding so long as any civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection; and

(B) Any support, child custody or visitation provisions, orders, remedies or relief issued as part of a protection order, restraining order, or injunction pursuant to State, tribal, territorial, or local law authorizing the issuance of protection orders, restraining orders, or injunctions for the protection of victims of domestic violence, sexual assault, dating violence, or stalking.

(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.



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For more copies, please contact the National Council of Juvenile and Family Court Judges at (800) 527-3223 or visit www.ncjfcj.org. 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). This project was supported by Grant No. 2004-WT-AX-K081 awarded by the U.S. Department of Justice, Office on Violence Against Women. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Justice, Office on Violence Against Women.