PROTECTING VICTIMS OF DOMESTIC VIOLENCE:

A LAW ENFORCEMENT OFFICER'S GUIDE TO ENFORCING ORDERS OF PROTECTION NATIONWIDE

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 law enforcement officers, 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

International Association of Chiefs of Police

To America's Law Enforcement Officers:

Protecting victims of domestic violence is a critical part of our job. The actions you take in these situations can clearly save lives. Orders of protection are issued to ensure the safety of victims of domestic violence. We need to enforce these orders to the best of our abilities. The "full faith and credit" component of the 1994 Violence Against Women Act requires law enforcement officers to enforce valid orders across the boundaries of states, tribes, and territories. *Once an order of protection is issued by a jurisdiction, it is enforceable in any other jurisdiction in the United States.* Both the Attorney General and the IACP are deeply concerned about domestic violence. This booklet is an excellent primer on orders of protection and full faith and credit. I urge you to read it—and act on it.

William Berger
President
International Association of Chiefs of Police, Inc.

This project was supported by a Cooperative Agreement awarded by the Violence Against Women Grants Office, Office of Justice Programs, U.S. Department of Justice, to the International Association of Chiefs of Police.

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WHAT IS FULL FAITH AND CREDIT?

In 1994, Congress enacted the full faith and credit provisions of the Violence Against Women Act (VAWA) [18 U.S.C. § 2265-66]. The federal law directs jurisdictions to give *full faith and credit* to valid orders of protection issued by other jurisdictions. This includes all 50 states, Indian tribal lands, the District of Columbia, the US Virgin Islands, Puerto Rico, American Samoa, the Northern Mariana Islands, and Guam. The full faith and credit provisions were amended in October 2000.

Simply stated, *full faith and credit* requires that:

Valid orders of protection must be enforced to protect victims wherever a violation of an order occurs, regardless of where the order was issued.

What does this mean for victims?

Abused persons who are granted court orders of protection can call upon law enforcement to protect them and to take all appropriate action against abusers nationwide.

What does this mean for abusers?

The abuser is bound by the terms and conditions of the order of protection and may be arrested and charged with violating the order and committing other substantive crimes wherever the abuser violates a valid order. It does not make any difference where the order was granted. The abuser must be arrested for a violation of an order of protection if the law of the jurisdiction where the violation occurred requires an arrest.

What does this mean for law enforcement?

If an order of protection is valid in the issuing jurisdiction, it must be enforced in every other jurisdiction whether or not it is registered. Some jurisdictions grant orders:

- ✓ to victims who might not be eligible for orders in the enforcing jurisdiction
- ✓ for periods of time longer than authorized in the enforcing jurisdiction
- ✓ containing directives against abusers that might not be available in the enforcing jurisdiction

A responding officer must enforce the terms and conditions of a valid order as written, including custody provisions and firearm prohibitions.

Officers are not required to know the laws of an issuing jurisdiction in order to enforce orders of protection. Officers in the enforcing jurisdiction must comply with all laws, policies, and procedures of their own jurisdiction concerning violation of orders of protection, such as mandatory arrest and victim notification, if applicable.

WHY IS FULL FAITH AND CREDIT IMPORTANT?

When victims of domestic violence leave, they and their children are at an increased risk of violence. Abusers who cross jurisdictions in pursuit of victims may be engaged in stalking, which is a significant risk indicator of life-threatening violence. *(See Assessing Lethality, page 9.)*

Liability for Failure to Enforce Orders of Protection

The mandate to give full faith and credit to orders of protection nationwide confronts law enforcement with new challenges, including the possibility of liability for failure to enforce orders of protection from other jurisdictions. Many jurisdictions have laws that provide officers with statutory immunity from civil liability when an officer takes reasonable action to protect a victim in a domestic violence case.

Failure to enforce an order of protection because it was issued in another jurisdiction may leave officers and departments vulnerable to liability.

Reducing the Risk of Liability:

- ✓ Understand the laws of your jurisdiction related to liability
- ✓ Respond in a timely fashion
- ✓ Investigate thoroughly
- ✓ Follow arrest laws of enforcing jurisdiction
- ✓ Enforce custody provisions
- ✓ Offer assistance and referral to victim
- ✓ Complete detailed incident reports
- ✓ Charge appropriately
- ✓ Follow-up for victim protection
- ✓ Train all law enforcement personnel
- ✓ Supervise carefully to ensure victim safety
- ✓ Confiscate proscribed weapons

Full Faith and Credit for Orders for Protection

Issuing jurisdiction determines:

- Whether an order of protection should be issued
- Who is to be protected
- Terms and conditions of the order
- Duration of the order

Enforcing jurisdiction determines:

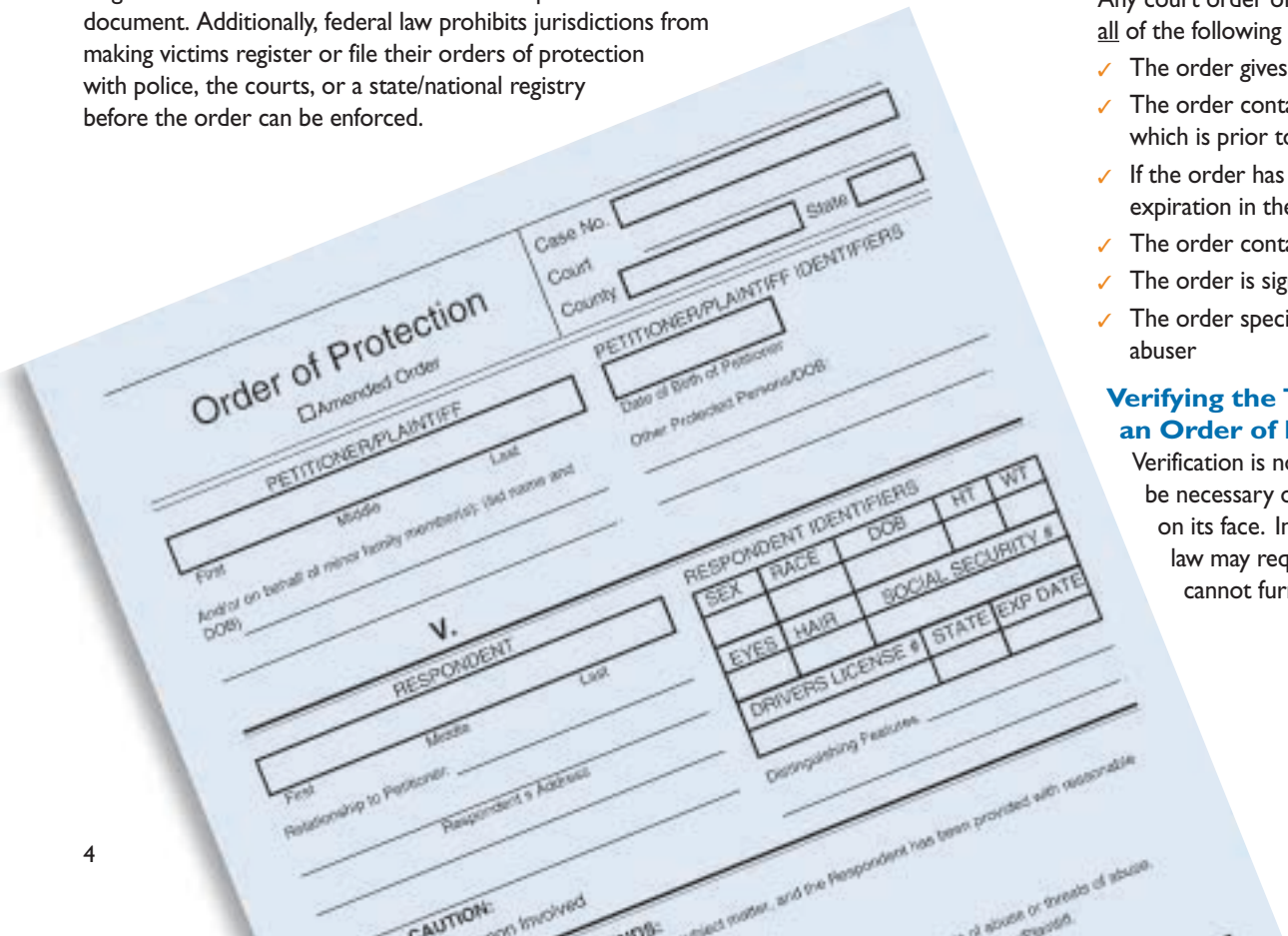
- How the order is enforced
- Arrest authority of responding officer
- Detention and notification procedures
- Crimes charged for violation of an order

WHAT IS AN ORDER OF PROTECTION?

Under VAWA, a protection order is defined as: 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.

The Federal full faith and credit provision of VAWA applies to both criminal and civil orders of protection. Orders may differ in form, content, length, layout, and names (i.e., stay away, restraining, criminal, and emergency or temporary protection orders, or injunctions).

In some jurisdictions, a certification form is affixed to the order of protection verifying that it is a valid order of the court. However, under federal law, a certification form is not required for the order of protection to be enforced. Nor is there any requirement that the order or the signature of the issuing authority be original or that there be a raised seal or stamp of the court on the document. Additionally, federal law prohibits jurisdictions from making victims register or file their orders of protection with police, the courts, or a state/national registry before the order can be enforced.


Order of Protection
Amended Order
Case No.
Court
County
State
PETITIONER/PLAINTIFF
First
Middle
Last
PETITIONER/PLAINTIFF IDENTIFIERS
Date of Birth of Petitioner
Other Protected Persons/DOB
And/or on behalf of minor family member(s): (list name and DOB)
V.
RESPONDENT
First
Middle
Last
Relationship to Petitioner:
Respondent's Address
RESPONDENT IDENTIFIERS
SEX
RACE
DOB
HT
WT
EYES
HAIR
SOCIAL SECURITY #
DRIVERS LICENSE #
STATE
EXP DATE
Distinguishing Features
CAUTION:

Basic Elements of a Valid Order of Protection

Any court order of protection should be presumed valid if all of the following are found:

- ✓ The order gives the names of the parties
- ✓ The order contains the date the order was issued, which is prior to the date when enforcement is sought
- ✓ If the order has an expiration date, the date of expiration in the order has not occurred
- ✓ The order contains the name of the issuing court
- ✓ The order is signed by or on behalf of a judicial officer
- ✓ The order specifies terms and conditions against the abuser

Verifying the Terms and Conditions of an Order of Protection

Verification is not required under Federal law and may be necessary only if the order does not appear valid on its face. In some cases, the enforcing jurisdiction's law may require verification if the protected party cannot furnish a copy of the order.

Verification can be accomplished by any one of the following methods:

- Confirm the elements of an order in the NCIC Protection Order File
- Review the elements of an order in state or local registries of protection orders in the issuing jurisdiction
- Confirm the elements by communication with the issuing court
- Review the elements of an order if previously filed with designated authorities in the enforcing jurisdiction
- Draw upon personal knowledge of the officer or information obtained through an interview

WHAT IS AN ORDER OF PROTECTION? *(continued)*

Determining the Terms and Conditions of an Order of Protection

After providing for victim and officer safety, it is essential that the officer read the order in its entirety. An order may state something in one paragraph and specify exceptions in another. For example, an order may state that the abuser is to have "no contact" with a victim in one paragraph and then, in another, state that contact may occur to arrange for visitation with the children. In this case, if the abuser contacted the victim for any reason other than to arrange for visitation, the order was violated.

Evaluating the Enforceability of an Order of Protection

An order of protection issued in another jurisdiction is enforceable when:

- ✓ The order appears to be valid *(see page 4)*
- ✓ There is probable cause to believe that a violation of the order occurred in the enforcing jurisdiction

Where enforcement requirements have not been met, the officer in the enforcing jurisdiction may not be able to arrest specifically for a violation of the order. However, other potentially chargeable offenses may have occurred, such as trespassing. The officer should make a warrantless arrest or seek an arrest warrant related to the criminal conduct based on the enforcing jurisdiction's law.

Orders of Protection and Military Jurisdiction

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 the 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.

Ex Parte Orders

Ex parte orders are emergency or temporary orders issued prior to providing the respondent with notice or a hearing. Ex parte orders are entitled to full faith and credit if the respondent has notice of the order and will have an opportunity to be heard in court 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. This is true even if the respondent has not yet had an opportunity to be heard in court.

Mutual Orders of Protection

Sometimes an order of protection will contain a "no contact" provision against both parties or it will direct both parties not to abuse each other. The full faith and credit section of VAWA requires special safeguards for inter-jurisdictional enforcement of this type of order. Basically it states that an order should be enforced against the respondent (person against whom the order was issued) and not the petitioner unless the respondent filed a written pleading and the issuing court made a specific finding that each party was entitled to such an order. If such findings were made, the order may be enforced against both parties.

WHAT ENFORCEMENT ACTION SHOULD BE TAKEN?

Immediate Action

- ✓ Ensure the safety of all involved
- ✓ Seek medical attention, if necessary
- ✓ Safeguard the victim from further abuse
- ✓ Secure and protect the crime scene
- ✓ Seek voluntary surrender of firearms for safekeeping purposes
- ✓ Seize firearms subject to state, territorial, local, or tribal prohibitions
- ✓ Enforce custody provisions in accordance with jurisdictional law and the language of the order
- ✓ Identify whether an order of protection has been violated
- ✓ Evaluate the validity and enforceability of the order
- ✓ Arrest for violation of the order where required by the enforcing jurisdiction
- ✓ Arrest for any other criminal offenses
- ✓ Seek an arrest warrant, when required, related to the criminal conduct if the abuser is not at the scene
- ✓ Attempt to locate and arrest the abuser

Firearms

Federal law prohibits an abuser subject to a qualifying* order of protection from possessing firearms and ammunition.18 U.S.C. § 922(g)(8). When an officer determines that a valid order of protection has been issued against an abuser, the officer should enforce the prohibition. Seizing weapons subject to this prohibition, if allowed under state law, is essential to victim and community safety. Officers also should be knowledgeable about their own jurisdiction's law authorizing or precluding possession or transfer of weapons to third parties by a person subject to an order of protection.

*The issue of "qualifying" orders of protection is a standard necessary under federal law to enforce federal firearms provisions; however, it is not required for according full faith and credit. For further details, see 18 U.S.C. § 922(g)(8).

HELPFUL INTERVENTIONS

Referral Actions

- ✓ Address transportation and housing needs of victim by making appropriate referrals to community services
- ✓ Refer victim to the appropriate court or victim advocacy agency to obtain assistance in enforcing the economic provisions of an order, such as child support enforcement

Safety Strategies

- ✓ Notify victim of legal rights within enforcing jurisdiction
- ✓ Assess lethality
- ✓ Conduct safety planning with the victim
- ✓ When a child has been abducted in violation of an order of protection, seek return of the child and when necessary seek an Unlawful Flight to Avoid Prosecution (UFAP) Warrant *(see page 12)*
- ✓ Provide telephone numbers for local shelters and hotlines
- ✓ Follow up with law enforcement and victim advocacy programs

"Providing the victim with referral information at the scene of a domestic incident can be the most important action an officer can take to stop domestic violence."
Bill Berger, IACP President

Assessing Lethality

Factors to consider in determining serious injury/lethality potential:

- Threats of homicide/suicide
- History of domestic violence and violent criminal conduct
- Separation of parties
- Stalking, including cross-jurisdictional travel to threaten or harass
- Depression or other mental illness
- Obsessive attachment to victim
- Drug or alcohol involvement
- Possession or access to weapons
- Abuse of pets
- Destruction of victim's property
- Access to victim and victim's family and other supporters

Please Note: These factors, which are not listed in any particular order of importance, can be helpful in many cases, but are not guaranteed predictors of future violence.

SUMMARY OF FEDERAL CRIMES OF DOMESTIC VIOLENCE

Officers must be familiar with Federal laws that pertain to domestic violence in order to assess whether Federal crimes have been committed.

For the following Federal crimes, the law defines State to include: a state of the United States, the District of Columbia, a commonwealth, territory, or possession of the United States.

Interstate Travel to Commit Domestic Violence—18 U.S.C. § 2261

It is a Federal crime for a person to travel in interstate or foreign commerce, or leave or enter Indian country with the intent to kill, injure, harass, or intimidate a spouse or intimate partner when in the course of or as a result of such travel, the person commits or attempts to commit a violent crime against that spouse or intimate partner. The person must intend to commit domestic violence at the time of travel. The broad definition of spouse or intimate partner includes a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, a person who cohabits or has cohabited with the abuser as a spouse, and 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.

It is also a Federal crime to cause a spouse or intimate partner to travel in interstate or foreign commerce, or leave or enter Indian country, by force, coercion, duress, or fraud, if in the course of, as a result of, or to facilitate such conduct or travel, the person commits or attempts to commit a crime of violence against the spouse or intimate partner.

Interstate Stalking—18 U.S.C. § 2261A

It is a Federal crime to travel in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or leave or enter Indian country, with the intent to kill, injure, harass, or intimidate any person if, in the course of or as a result of such travel, the offender places that person in reasonable fear of the death of, or serious bodily injury to, that person, a member of that person's immediate family, or that person's spouse or intimate partner. The terms immediate family and spouse or intimate partner are broad and include a spouse or former spouse of the stalking target, a person who shares a child in common with the stalking target, a person who cohabits or has cohabited as a spouse with the stalking target, 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 the victim resides, and a parent, child, sibling, and all household members related to the stalking target by blood or marriage.

It is also a Federal crime to use the mail or any facility of interstate or foreign commerce (including telephones, fax machines, and the Internet) to engage in a course of conduct that places a person in reasonable fear of the death of, or serious bodily injury to, that person, a member of that person's immediate family, or that person's spouse or intimate partner. The offender must commit these acts with the intent either 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 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, that person, a member of that person's immediate

Interstate Stalking *(continued)*

family, or that person's spouse or intimate partner. A course of conduct is defined as a pattern composed of two or more acts evidencing a continuity of purpose.

Interstate Violation of an Order of Protection—18 U.S.C. § 2262

It is a Federal crime to travel in interstate or foreign commerce, or leave or enter 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. The person must intend to violate the order at the time of travel and must subsequently engage in a violation of such portion of the order.

It is also a Federal crime to cause another person to travel in interstate or foreign commerce, or leave or enter Indian country, by force, coercion, duress, or fraud, if in the course of, as a result of, or to facilitate such conduct or travel the offender 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.

Unlawful Flight to Avoid Prosecution (UFAP) Warrant

'UFAP' stands for 'Unlawful Flight to Avoid Prosecution,' a Federal crime under 18 U.S.C. 1073. In the Parental Kidnapping Prevention Act of 1980, Congress made clear its intent that this provision apply to cases involving parental kidnapping. When state and local law enforcement officials desire Federal assistance in locating parents who have illegally fled their jurisdiction with a child, they would first secure a state or local warrant for the individual's arrest, and then request that the FBI obtain a UFAP warrant and assist in the location and return of the individual. The state or local prosecutor may have to bear the cost of extradition if the state charge is extraditable. If a state or local felony warrant cannot be used, then 18 U.S.C. 1204 is an alternative procedure to follow.

QUESTIONS FREQUENTLY ASKED ABOUT FULL FAITH AND CREDIT

What types of orders are accorded full faith and credit under federal law?

- Both criminal and civil orders regardless of what the order is titled
- Orders issued by courts with personal jurisdiction over the parties and subject matter jurisdiction over the case
- The law may encompass ex parte, Tribal, and consent orders

What if the victim does not have a copy of the order of protection?

- Seek to verify the existence of an order *(see page 5)*
- Verify victim's claim of an order of protection through reliable and credible information
- Confirm through abuser's statement that an order of protection exists
- Determine whether there is probable cause to believe that the abuser has committed a criminal offense
- Arrest abuser if appropriate under enforcing jurisdiction's law and notify issuing authority of arrest
- Refer victim to appropriate court or advocacy agency

What if the abuser claims no notice or service of the order of protection?

- Verify the existence of an order *(see page 5)*
- Give notice to abuser of terms of the order of protection and provide abuser with a copy
- Explain consequences of future violations to the abuser
- Notify issuing authority that the abuser received notice and/or a copy of the order of protection
- Notify issuing authority of arrest, if applicable

"As law enforcement officers, 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."

Diane M. Stuart
Director
Office on Violence Against Women

What if the abuser has violated the order of protection and then fled the scene?

- Determine if abuser's actions warrant arrest
- Follow departmental procedure for dealing with a criminal suspect who has fled the scene
- Conduct safety planning and refer victim to appropriate court or advocacy agency

What if the order of protection gives relief not authorized in officer's jurisdiction?

- Enforce terms and conditions of the order of protection as written *(see page 6)*
- Enforce for duration specified in the order of protection
- Enforce on behalf of victim(s) named in the order of protection

TECHNICAL ASSISTANCE ON FULL FAITH AND CREDIT IMPLEMENTATION

Technical assistance is available to law enforcement and victims of domestic violence to answer specific questions and to facilitate effective enforcement.

Assistance to Victims of Domestic Violence

- **National Domestic Violence Hotline** (800) 799-SAFE (7233), TTY (800) 787-3224 (24 hours/day, for referral to state and local programs)

Technical Assistance on Full Faith and Credit

- **International Association of Chiefs of Police** (800) The-IACP
- **National Center on Protection Orders and Full Faith & Credit** (800) 903-0111, ext. 2
- **Battered Women's Justice Project** (800) 903-0111, ext. 1

Expertise on Tribal Legal Issues

- **Mending the Sacred Hoop** (888) 305-1650
- **Northern Plains Tribal Judicial Institute** (701) 777-6176
- **Tribal Law and Policy Institute** (323) 650-5467

Expertise on Child Custody

- **National Center on Protection Orders and Full Faith & Credit** (800) 903-0111, ext. 2
- **National Council of Juvenile and Family Court Judges** (775) 784-6012

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