



# VIOLATIONS OF VAWA QUALIFYING ORDERS OF PROTECTION: ENFORCEMENT & REMEDIES

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## Protection Orders: Enforcement and Remedies

### A. VAWA QUALIFYING ORDERS OF PROTECTION

VAWA qualifying orders of protection will be entitled to enforcement in accordance with full faith and credit provisions of the VAWA. See 18 U.S.C. 2265. To be deemed a qualifying order:

- The court order must expressly enjoin or otherwise restrain an individual "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..." See 18 U.S.C. 2266(5)(A).
- Order issued pursuant to a petition, complaint, or motion filed by or on behalf of an individual seeking protection. See 18 U.S.C. 2266 (5)(A).
- These orders may be issued in criminal proceedings or through civil proceedings. See 18 U.S.C. 2266 (5)(A).
- The individual subject to the order must have been provided notice and an opportunity to be heard OR otherwise be afforded due process within a reasonable time after an ex parte order is issued. See 18 U.S.C. 2265 (b).
- The issuing court must have had jurisdiction over the parties to the order. See 18 U.S.C. 2265 (b).
- The issuing court must have had subject matter jurisdiction under applicable law. See 18 U.S.C. 2265 (b).
- Order is enforceable so long as it has not expired.

**Note:** *The jurisdiction issuing the order of protection will determine who is eligible for protection, the nature of the protection to be ordered and the length of time the order will be in effect.*

#### Best Practice TIPS:

- Order should include specific findings relevant to personal and subject matter jurisdiction; violence, harassing or threatening behavior; enforcement authority or directives for law enforcement and/or other jurisdictions.
- When making findings relevant to jurisdictional authority, the Tribal Court should be very specific and state factors considered by the court in making the finding.
- Tribal Court should include all of the Full Faith and Credit requirements as findings in the order of protection.

### B. ENFORCEMENT: FULL FAITH AND CREDIT FOR QUALIFYING ORDERS OF PROTECTION

Qualifying orders of protection are entitled to enforcement in accordance with the full faith and credit provisions of the Violence Against Women Act. See 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 [1] as if it were the order of the enforcing State or tribe.

#### Orders that will NOT be entitled to enforcement under full Faith and Credit provisions of the VAWA

Orders of protection that are based upon a cross or counter petition will not be entitled to full faith and credit if:

- No cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or
- A cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order. See 18 U.S.C. 2265(c).

#### Full Faith and Credit provisions DO NOT require:

- Notification of the registration or filing of the order to the party against whom the protection order has been issued. The party shall not be notified that the order has been registered or filed in the enforcing jurisdiction unless at the protected party's request. See 18 U.S.C. 2265(d)(1).
- Registration of an order as a prerequisite to enforcement to be accorded full faith and credit, by the enforcing State, tribal, or territorial jurisdiction. See 18 U.S.C. 2265(d)(2).

## C. OTHER ENFORCEMENT OPTIONS

Beyond VAWA FFC there may be other legal avenues to seek enforcement of a protection order such as:

### State Laws

- Recognition of foreign judgments statutes;
- State full faith and credit laws; or
- Comity.

### Tribal Laws

- Foreign judgement recognition statutes;
- Tribal full faith and credit laws; or
- Comity.

## D. REMEDIES FOR VIOLATIONS OF QUALIFYING ORDERS OF PROTECTION

The jurisdiction that is enforcing the qualifying order of protection will determine the procedure that will apply when violations are alleged, the authority of law enforcement to arrest an individual for an alleged violation, and the penalties, sanctions or remedies that will be imposed when a violation is found to have occurred. Some of the types of remedies that may be imposed by a court when a violation of a qualifying order of protection is found to have occurred might include, but are not limited to:

### 1. Civil Contempt

- A tribe may choose to deem a violation of a protection order to be a civil contempt of court. Typically, contempt can be found where an individual unlawfully challenges or otherwise refuses to obey a court order, directive or authority and the court seeks to force compliance. If an individual is found to be in contempt of court, the court may subject an individual to civil sanctions such as civil penalties or incarceration to compel compliance as opposed to punishment for failure to comply with the court order. Civil contempt can be an important remedial measure for tribes to ensure that non-Indian offenders can be held accountable in the event that the tribe does not exercise special domestic violence criminal jurisdiction under the Violence Against Women Act.

### 2. Criminal Contempt

- A tribe may choose to deem a violation of a protection order to be a criminal contempt of court. Typically, contempt can be found where an individual unlawfully challenges or otherwise refuses to obey a court order, directive or authority. In criminal contempt proceedings, the criminal contempt charge would invoke full criminal process and all rights must be afforded to a defendant as defined by the Indian Civil Rights Act. If an individual is found guilty of criminal contempt of court, they can face jail time, fines or other punishment supported by tribal code such as restitution, community service or banishment. See 25 U.S.C. 1301-1304.

### 3. Criminal Complaint

- A tribe may choose to deem a violation of a protection order a crime. If the tribe deems it a crime to violate an order of protection, there should be a defined crime within the criminal code. It is possible that the defined crime be Criminal Contempt, however it could also be titled something specific to protection order violations. It is important to note that any crimes charged would invoke full criminal process and all rights must be afforded to a defendant as defined by the Indian Civil Rights Act. If an individual is found guilty of crime for violating an order of protection, they can typically be sentenced to jail time, fines or other punishment supported by tribal code such as restitution, community service or banishment.

### 4. Banishment/Exclusion

- For some tribes banishment or exclusion may be a sentencing alternative for specific crimes. In other tribes it may be a separate cause of action that an individual can pursue through a designated forum and in other tribal communities it may be a legislative mandate imposed for specific types of conduct. Banishment or exclusion may be a remedial measure used to address violations of protection orders for some tribes.

### 5. Others

- Tribal sovereignty affords much latitude to tribes to develop remedial measures applicable to violations of protection orders. There may be some limitations based upon applicable civil liberties as prescribed by the Indian Civil Rights Act. See 25 U.S.C. 1301-1304.

**Note: Law Enforcement plays a critical role in the service and enforcement of orders of protection. It is therefore important to provide ongoing training and education for law enforcement relevant to protection orders and to further encourage law enforcement participation in any coordinated community response efforts.**

### Resources

For additional information on tribal protection orders, VAWA full faith and credit, and enforcement of tribal protection orders please visit [www.TribalProtectionOrder.org](http://www.TribalProtectionOrder.org).