

Enforcing Domestic Violence Protection Orders Throughout the Country: New Frontiers of Protection for Victims of Domestic Violence

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On September 13, 1994, President William J. Clinton signed into law the Violence Against Women Act (VAWA) as Title IV of the Violent Crime Control and Law Enforcement Act of 1994. Among other purposes, the VAWA provides legal protections to battered women and enhances prosecution of domestic violence crimes. One of the most important provisions of VAWA is the section that establishes nationwide enforcement of civil and criminal protection orders in state, tribal, and territorial courts. More specifically referred to as the full-faith-and-credit provision, this section directs state, Indian tribes, and U.S. territories to honor "valid" protection orders issued by sister states, tribes, and territories and to treat those foreign orders as if they were their own.¹

The full-faith-and-credit provision of the VAWA poses some serious problems for those involved in the enforcement of orders from other jurisdictions. The VAWA is an extraordinary piece of legislation—extraordinary in its brevity

and in that it affects the entire country. It does not, however, answer serious questions about procedures for the enforcement of orders across jurisdictional lines.

Protecting Battered Women's Right to Travel

Section 2265 of the VAWA is extremely important not only because it identifies domestic violence as a national problem but, more important, because it reaffirms a battered woman's right to travel and recognizes the necessity of affording her protection wherever she may be found. Mobility is essential to victims of domestic violence for a variety of reasons. For example, if an abused woman is establishing a household independent of her batterer, she may need to travel or move to another jurisdiction to pursue employment opportunities; she also may find it necessary to relocate to another state, territory, or tribe in order to be closer to her personal support network of family and friends. A victim may need to travel to protect herself from recurring violence. Indeed, enhancing victim safety is the primary rationale behind passage of the federal law. In short, Section 2265 of the VAWA was enacted to enable victims of domestic violence to

¹ Violence Against Women Act, 18 U.S.C. § 2265.

relocate quickly and frequently in order to protect themselves from further acts of violence and stalking behavior.

Requirements for “Validity”

As mentioned above, the full-faith-and-credit provision applies only to “valid” protection orders. An order is deemed “valid” if the court that issued it had both subject-matter jurisdiction over the case or controversy in question and personal jurisdiction over the parties. The issuing court must have given the defendant reasonable notice and an opportunity to be heard before the order was entered. In the case of ex parte orders, notice and opportunity to be heard must be afforded in the time required by the state, tribal, or territorial law and, in any event, within a reasonable period of time after the order is issued sufficient to protect the defendant’s right to due process.

Section 2265 of the VAWA applies to “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 temporary and final protection orders issued by civil and criminal courts (other than support or child custody orders)...”² In other words, the full-faith-and-credit provision covers emergency and temporary ex parte orders, as well as final civil or criminal protection orders, provided that all such orders meet the due process and jurisdictional requirements of “validity” as set forth in the Act.

As noted above, Section 2266 defines protection orders expressly to exclude “custody and support orders.” Does this mean that custody provisions in protection orders are not entitled to interjurisdictional enforcement under the full-faith-and-credit provision of the VAWA? At present, there is a lack of consensus about whether the mandates of section 2265 extend to custody provisions that are included as part of relief in protection orders. On the one

hand, a number of experts maintain that the plain language of the federal statute explicitly exempts custody and support provisions. On the other hand, a handful of scholars contend that Congress intended to exclude only custody and support orders that are issued pursuant to custody matters filed in a separate divorce proceeding.

Since the legislative history is silent, and thus the answer remains unclear, attorneys and advocates for victims of domestic violence need to be aware of this potential problem when seeking relief under state, tribal or territorial protection order codes. Beyond that, practitioners should refer to other laws that govern whether custody awards in protection orders are entitled to full faith and credit. In particular, they should review their state Uniform Child Custody Jurisdiction Act (UCCJA) or Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and the federal Parental Kidnapping Prevention Act (PKPA). If the custody provisions in a protection order are consistent with the jurisdictional requirement of these laws, then theoretically they should be entitled to interstate enforcement.

Under the full-faith-and-credit provision of the VAWA, mutual protection orders, which generally are denied as protection orders that include prohibitions against both parties, are enforceable only on behalf of the plaintiff (or petitioner) in other states, Indian tribes, and U.S. territories, unless the defendant (or respondent) filed a cross or counterpetition seeking such an order and the court made specific findings that each party was entitled to such an order.

Enforcement of Foreign Orders

The full-faith-and-credit provision of the VAWA directs enforcing states, tribes, and territories to treat foreign protection orders as if they were their own. What does this mean for purposes of enforcement? Basically it means the enforcing (nonissuing) jurisdiction must follow three rules:

² *Id.* § 2266.

- It must honor the foreign protection order, even if the protected part would not have been eligible for a protection order in that jurisdiction.
- It must enforce all of the terms of the foreign protection order, even if the order provides relief that would be unavailable under the laws of the enforcing jurisdiction.
- It must treat the foreign protection order as if it were issued in that (nonissuing) jurisdiction and apply whatever sanction or remedy is available under the laws of that (enforcing) state, tribe, or territory for violations of the foreign order.

Section 2265 is not self-executing. In other words, it does not prescribe the specific enforcement procedures that states, U.S. territories, and Indian tribes must adopt to comply with its mandate. In fact, pursuant to the full-faith-and-credit provision, the only requirement for interstate or interjurisdictional enforcement of a protection order is that the foreign order be valid as that term is defined in the VAWA. Jurisdictions are free to establish their own procedures for enforcement of foreign protection orders, provided those procedures do not frustrate or conflict with the intent of the federal law. . . .

Violence Against Women Act of 2000

The Violence Against Women Act of 2000 (VAWA 2000) (Pub. L. No. 106-386), enacted on October 28, 2000, and funded at \$3.3 billion, improves legal tools and programs addressing domestic violence, sexual assault, and stalking. The VAWA 2000 (1) reauthorizes for five years critical grant programs created by the original VAWA and subsequent legislation, (2) establishes new programs, and (3) strengthens federal laws. It also expands emergency jurisdiction under the Parental Kidnapping Prevention Act to include domestic violence cases.

With regard to full-faith-and-credit enforcement of protection orders issued by a court of another state, the VAWA 2000 prohibits states and tribes from requiring notification (to the perpetrator) of the registration of an out-of-state or tribal protection order unless the victim requests the notification. The VAWA 2000 specifies that registration or filing or both may not be a prerequisite for enforcing out-of-state or tribal orders of protection; it also clarifies that tribal courts have full civil jurisdiction to enforce orders of protection.

The VAWA 2000 reauthorizes for five years the Grants to Combat Violent Crimes Against Women Program (which includes the STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grants Program). It expands the purposes for which money may be used to include assisting victims of domestic violence and sexual assault in immigration matters.

The Act authorizes the U.S. attorney general to make grants to provide civil legal assistance for victims of domestic violence, stalking, and sexual assault at \$40 million for the 2001–2005 fiscal years. Among the grantees are programs funded by the Legal Services Corporation. Grantees also may include nonprofit entities, Indian tribal governments, and law school clinics. The Act defines legal assistance to include family, administrative agency, housing, protection orders, and immigration matters.

The VAWA 2000 establishes various new protections for battered immigrants. It expands battered immigrant's access to immigration relief and removes abusers' ability to use immigration laws as a means of control over immigrant victims. For example, it allows a battered immigrant who was divorced from the abuser within the previous two years to file for VAWA relief, provided that the divorce was connected to the abuse. It grants new and improved waiver authority for the attorney general to assist battered women and their children in accessing lawful permanent residence. The law makes clear that battered immigrants' use of public benefits specifically made available to VAWA self-petitioners under the welfare law does not make them ineligible for their green cards on the ground that they are likely to become a public charge. Self-petitioners may adjust their status to lawful permanent resident in the United States rather than having to go abroad to do so. The Act also creates a new nonimmigrant "U" visa for those who are victims of certain serious crimes, including domestic violence, sexual assault, stalking, and trafficking crimes, and who meet certain requirements.

[Editor's note: This summary was adapted from material on the U.S. Department of Justice Web site, www.ojp.usdoj.gov/vawo/laws/vawa_summary2.htm.]