



**NATIONAL  
INDIGENOUS**  
WOMEN'S RESOURCE CENTER

# **FULL FAITH AND CREDIT, PROTECTION ORDERS AND SAFETY FOR NATIVE FAMILIES**





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National Indigenous Women's Resource Center (NIWRC)

[www.niwrc.org/resources](http://www.niwrc.org/resources)

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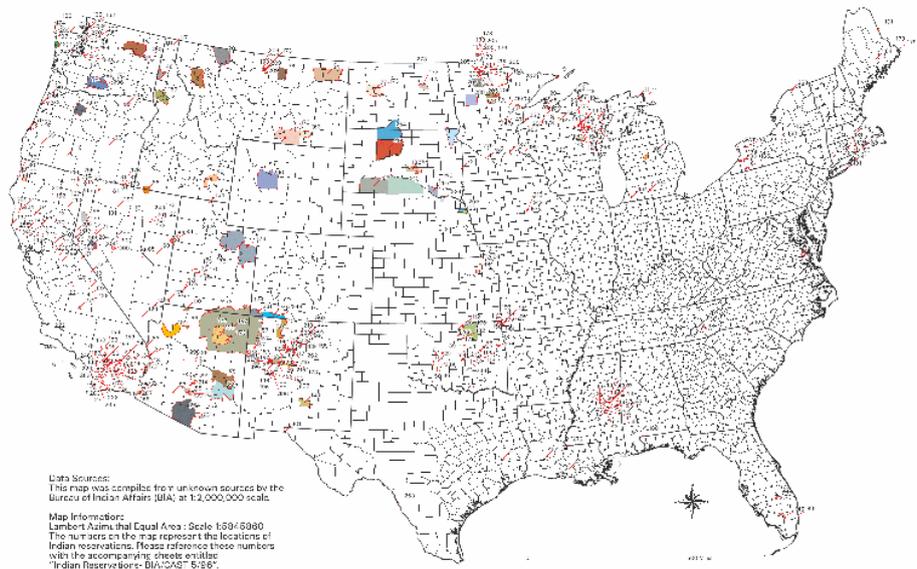
**2018**

# WHAT IS FULL FAITH & CREDIT?

The Violence Against Women Act (VAWA) requires that every court in the United States give full faith and credit to protection orders issued by other jurisdictions. 18 U.S.C. § 2265. Full faith and credit means that all jurisdictions, whether a tribe, state or territory, must honor and enforce protection orders issued by another court.

This provision in the law is important because Native survivors with protection orders often live, work, or go to school in different jurisdictions. A woman might live on a reservation, but work or attend school off reservation, or she may travel off and on reservations to attend ceremonies, sporting events and family gatherings. Alternatively, survivors of violence have to hide from their abuser or flee to another location, which often means leaving one reservation and entering another or living off-reservation. Full faith and credit means that another jurisdiction must honor and enforce the order regardless of what jurisdiction issued it. These orders may be called a “foreign protection order.”

Indian Reservations in the Continental United States



The law specifically states:

- (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.

## **WHAT IS A FOREIGN PROTECTION ORDER?**

A foreign protection order is any temporary or permanent order or injunction from a civil or criminal court other than the jurisdiction enforcing the order. All valid protection orders should be recognized and enforced to ensure survivor safety. This means that if a perpetrator violates the terms of the order, he/she should be held accountable, regardless of where the violation occurs. Usually, this means that a person can be arrested and charged for violation of a protection order in addition to any other new crime.

## **WHAT ORDERS ARE ENFORCEABLE?**

Under VAWA, a protection order is broadly defined to include, any “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” 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.” 18 U.S.C. § 2265.

The protection order must meet the following conditions to be enforceable:

1. The court had jurisdiction over the person and action, and;
2. The respondent (perpetrator/abuser/batterer) must have had notice and an opportunity to be heard.

A temporary order issued ex parte (at the request of one party without the involvement of the other), must provide the respondent with the opportunity to be heard in court in a reasonable time. If the respondent is served consistent with the law and fails to appear at the hearing, the court may issue a permanent order that will be effective according to the laws of the issuing court.

## **VAWA 2013- TRIBAL JURISDICTION TO ISSUE AND ENFORCE ORDERS OF PROTECTION**

VAWA 2013 amended the Full Faith and Credit provisions of the law by clarifying the authority of Indian Tribes to issue and enforce protection orders involving any person within the authority of the Indian Tribe. 18 U.S.C. 2265 (e). This clarification was necessary to resolve ongoing confusion by state courts concerning the authority of a tribal court to issue and enforce a protective order over non-Indians or non-member Indians.

In addition, VAWA 2013 specifically recognizes a tribe’s inherent sovereignty to exercise what is called “special domestic violence jurisdiction” if the tribe chooses to by adopting specific federal law requirements. Once a tribe adopts these legal requirements, it can prosecute non-Indians for violations of protective orders that occur within its jurisdiction. 25 U.S.C. §1304. The decision to exercise special domestic violence jurisdiction rests with the Indian tribe itself. If the Indian tribe decides not to exercise this authority

to criminally prosecute non-Indians, it may still choose to impose civil penalties for the violation of a protection order. In VAWA 2013, Congress also clarified the extent to which Indian nation can exercise civil authority with regard to protection orders:

For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe. 18 USC 2265(e).

## **ENFORCING PROTECTION ORDERS - CHALLENGES**

Educating law enforcement officers, judges, and prosecutors on the full faith and credit provision is critical. A survivor with a protection order may be vulnerable to further abuse and violence if a law enforcement officer is not educated about the federal law requirements.

In some jurisdictions, survivors have mistakenly been told that registration or filing with the enforcing jurisdiction is a prerequisite for enforcement of a protection order issued from another jurisdiction. Registration requirements place additional burdens on survivors and can re-victimize them. VAWA is clear that registration of a protection order is NOT required for enforcement. 18 U.S.C. § 2265 (d).

Some Indian nation and state governments have an option for registration or entry into the NCIC federal database. Some survivors may find that these options provide more security because law enforcement officers may have quicker access to the details of the order. Such registration or entry is not required for the order to be enforceable. Further, VAWA prohibits states and Indian nation from requiring that a perpetrator receive notification of registration, unless the survivor requests such notification. This provision allows survivors to keep their whereabouts confidential. If a survivor chooses to register the protection order, registration must be free of charge.

## **WHAT CAN I DO TO ENSURE PROTECTION ORDERS ARE RECOGNIZED?**

### **I am a survivor**

Understanding full faith and credit will help you make decisions about safety. If you get a protection order from a state or tribal court, request multiple copies from the court and keep a copy of the order (a certified copy is best, but not required) with you at all times. If your children are included in your order, provide a copy to the school. Protection orders can be enforced without a copy, but law enforcement officers will be able to take immediate action if provided with a copy of the order. If the respondent violates the order, contact local law enforcement as soon as possible and let them know you have a protection order. Protection orders are often valid for a specific amount of time and may be renewed prior to the expiration date.

### **I am an advocate**

Understanding full faith and credit will help you strategize about safety with the survivors you support. Your role as an advocate and community educator is critical. Educating law enforcement officers, judges,

prosecutors, and Tribal leaders about full faith and credit will make it more likely that the protection order will be enforced. Reach out to advocates working in other jurisdictions and share ideas and information about the implementation of full faith and credit. Review the Protection Order form and ensure it contains information about full faith and credit from 18 U.S.C. §2265

### **I am a law enforcement officer**

A law enforcement officer's primary role is to keep all community members safe. Full faith and credit is designed to help you protect survivors and hold abusers accountable. A valid protection order from any jurisdiction must be enforced and treated like a protection order issued by judges in your local court. Keep in mind that a survivor does not need to produce a written copy of the order, nor does the order have to be registered or entered into the national database to be enforceable. Failure to enforce a protection order can result in more danger to the survivor, the children/family, the community, and other law enforcement officers. Many jurisdictions provide statutory immunity protections for law enforcement officers when enforcing a protection order acting in good faith.

### **I am a Tribal leader**

Tribal leaders can help by passing tribal laws that are consistent with VAWA. With the passage of VAWA 2013, Tribal leaders may consider revisions to their tribal codes to include provisions that acknowledge tribal court authority to hold a respondent of a protection order in civil contempt of court. In addition, tribes can elect to adopt laws that provide for the criminal prosecution of non-Indians who violate protection orders. The imposition of civil and criminal penalties for violation of an order of protection sends a strong message of intolerance for domestic violence.

## **THE HOPE CARD**

Some state and tribal jurisdictions have implemented a "Hope Card" Program. The Hope Card is the size of a credit card or driver's license and is issued by a state or tribe when a long-term protection order is issued. On the front of the card are the names of those being protected, the court that issued the order, the order number and the date it was issued. On the back is the name of the person ordered to stay away from the holder, a date of birth, physical description and, most importantly, a picture. Copies of the card can be left with landlords, daycares, schools, etc

For more information contact one of the following technical assistance providers:

National Indigenous Women's Resource Center (NIWRC)

[www.NIWRC.org](http://www.NIWRC.org)

(855) 649-7299

National Center on Protection Orders and Full Faith and Credit (NCPOFCC)

[www.fullfaithandcredit.org](http://www.fullfaithandcredit.org)

(800) 256-5883, ext.2



**THE FULL FAITH AND CREDIT PROVISION  
UNDER THE VIOLENCE AGAINST WOMEN  
ACT (VAWA) REQUIRES EVERY COURT IN  
THE UNITED STATES TO RECOGNIZE AND  
ENFORCE VALID PROTECTION ORDERS OF  
OTHER COURTS.**

**THIS MEANS THAT ALL INDIAN NATIONS  
AND STATES MUST ENFORCE A PROTECTION  
ORDER ISSUED BY ANOTHER TRIBAL COURT.**

**LIKewise, ALL INDIAN NATIONS AND  
STATES MUST ENFORCE A PROTECTION  
ORDER ISSUED BY ANOTHER STATE COURT.**