

Tribal Law and Policy Institute Tribal State Collaboration Webinar Series: Tribal, State and Local Collaborations for Enforcement of Tribal Protection Orders

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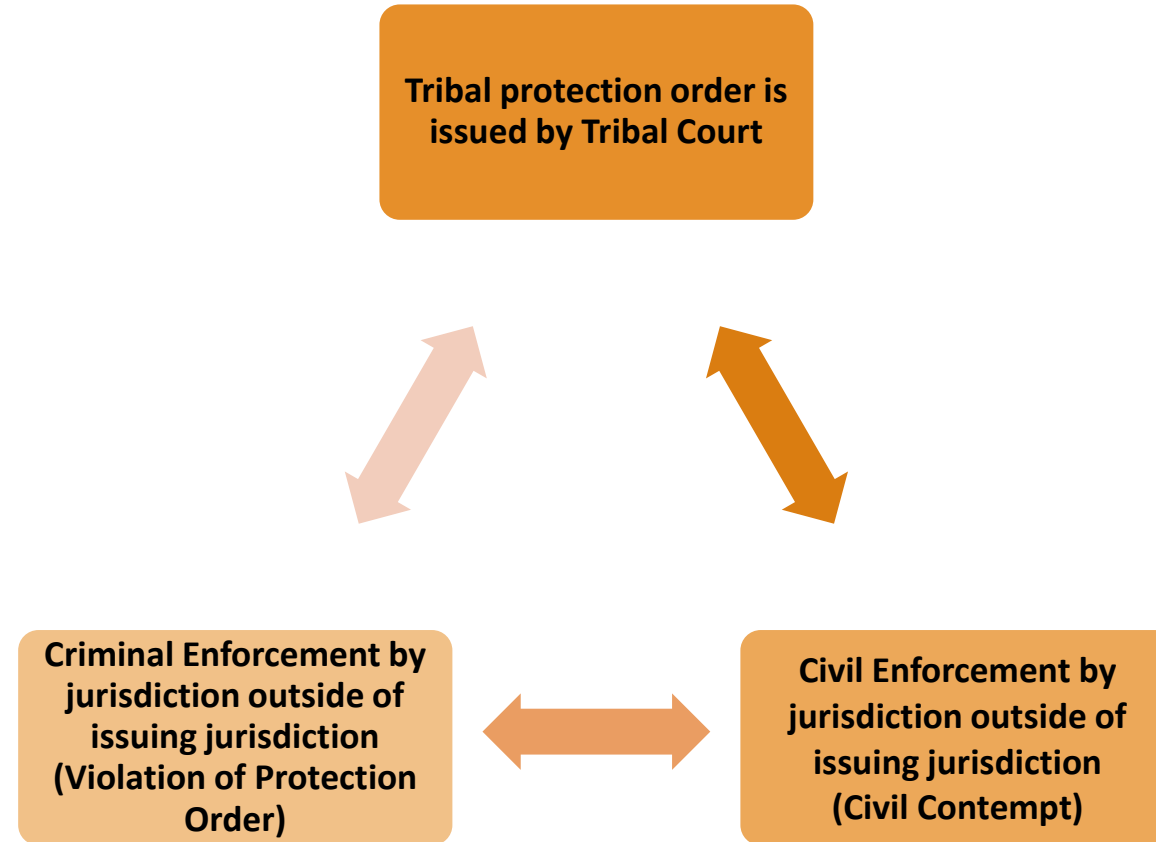
Presenter

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Learning Objectives

- Understand the importance of enforcement of tribal protection orders.
- Understand the concept of Violence Against Women Act (VAWA) Full Faith and Credit for protection orders.
- Understand the VAWA federal definition of a protection order.
- List the necessary protection order language to trigger VAWA full faith and credit mandate.
- Describe examples of tribal-state collaboration to enforce tribal protection orders.

What is Cross-Jurisdictional Enforcement of Tribal Protection Orders?



Why is Cross-Jurisdictional Enforcement of a Tribal Protection Order Important?

- Crucial means of providing safety to the victim as the victim travels across jurisdictional boundaries.
- Provides reassurance to the victim that traveling across jurisdictional boundaries will not affect the terms of the tribal protection order.
- Sends message to the perpetrator that violations of a tribal protection order outside of Indian country will have consequences.
- Instrumental in recognizing tribal sovereignty by recognizing and enforcing tribal protection orders.

VAWA: Full Faith & Credit

What does full faith and credit for tribal protection orders mean?

- Legally, it means that when a protection order issued by any state, Indian tribe, or territory is violated in another jurisdiction, that jurisdiction must enforce the order as if it were its own.
- Practically, it means that a victim can travel from one jurisdiction to another without having to secure a new protection order in each jurisdiction.
- It means that the protection order will be enforced as it is written by the enforcing jurisdiction.

18 U.S.C. 2265 (a): Full Faith and Credit for Protection Orders

“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.***”

18 USC 2265 (b): Full Faith and Credit for Protection Orders

(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. (Emphasis added)

VAWA: Protection Order

Critical Protection Order Language

- In order to be provided full faith and credit, the specific VAWA requirements in [18 U.S.C. 2265\(b\)](#) *need to be met and in the Protection Order:*
- The court has jurisdiction over the parties and matter under the law of such state, Indian tribe, or territory; and
- 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 Orders are Included in the 18 U.S.C. 2266 (5) VAWA Definition of a Protection Order?

- Issued by any court- state or tribal.
- May be civil or criminal.
- If order fits within the definition of a protection order, it does not matter what the order is named or called (stay away, personal protection order, restraining order).
- The definition includes any order that prevents:
 - violent or threatening acts;
 - harassment;
 - sexual violence;
 - contact or communication with another person.
- May include other provisions (e.g., child custody and visitation) that are also entitled to Full Faith and Credit.

18 U.S.C. 2266(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.

Tips: Improving Enforcement Outcomes

*Tip: Review VAWA
Mandatory
Protection Order
Language*

- Jurisdiction over the subject matter.
- Jurisdiction over the person.
- Notice and opportunity to be heard.

Tribal Civil Jurisdiction Over the Subject Matter 18 U.S.C. 2265 (e)

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.* (Emphasis added)

18 U.S.C. 2265 (e) Maybe be a partial overruling of *Montana* but not clear

Let's take a look at the *Montana* test.

Tribal Jurisdiction Over the Subject Matter

The *Montana* test requires the tribal court to find that:

- 1) the parties entered into a consensual relationship with the tribe or its members through commercial dealing, contracts, leases or “other arrangements” **or**
- 2) the conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

If neither of the two factors listed in the *Montana* test are present, the tribal courts may not exercise civil jurisdiction over non-members on non-Indian lands in Indian country.

Tip: *Drafting Provisions Relevant to Tribal Civil Jurisdiction Over the Subject Matter*

- What tribal constitutional provision states that this court may hear this types of case?
- What tribal code provision(s) indicates that this court may hear this case?
- If either party is non-member, consider explaining the jurisdictional basis (VAWA 2013 codified at 18 USC 2265(e)) and/or address the *Montana* test discussed next.

Jurisdiction over the Person or Parties

- Personal Jurisdiction: the legal power of the court to render judgment over a specific person.
- Demonstrates a person's minimum contacts or connections with the tribe to indicate that it is not unfair to require the defendant to litigate in tribal court.

Tip: Drafting Provisions Relevant to Tribal Civil Jurisdiction Over the Person

- List any requirements in the statute regarding who may file a protection order (typically the filing of a petition satisfies the tribal court's jurisdiction over the petitioner).
- List tribal statute setting forth parties the tribes may exercise civil jurisdiction over.
- Identify any contacts the petitioner and defendant have to the tribe (Examples: tribal members, work for tribe, child is a member, etc).

Reasonable Notice and Opportunity to be Heard

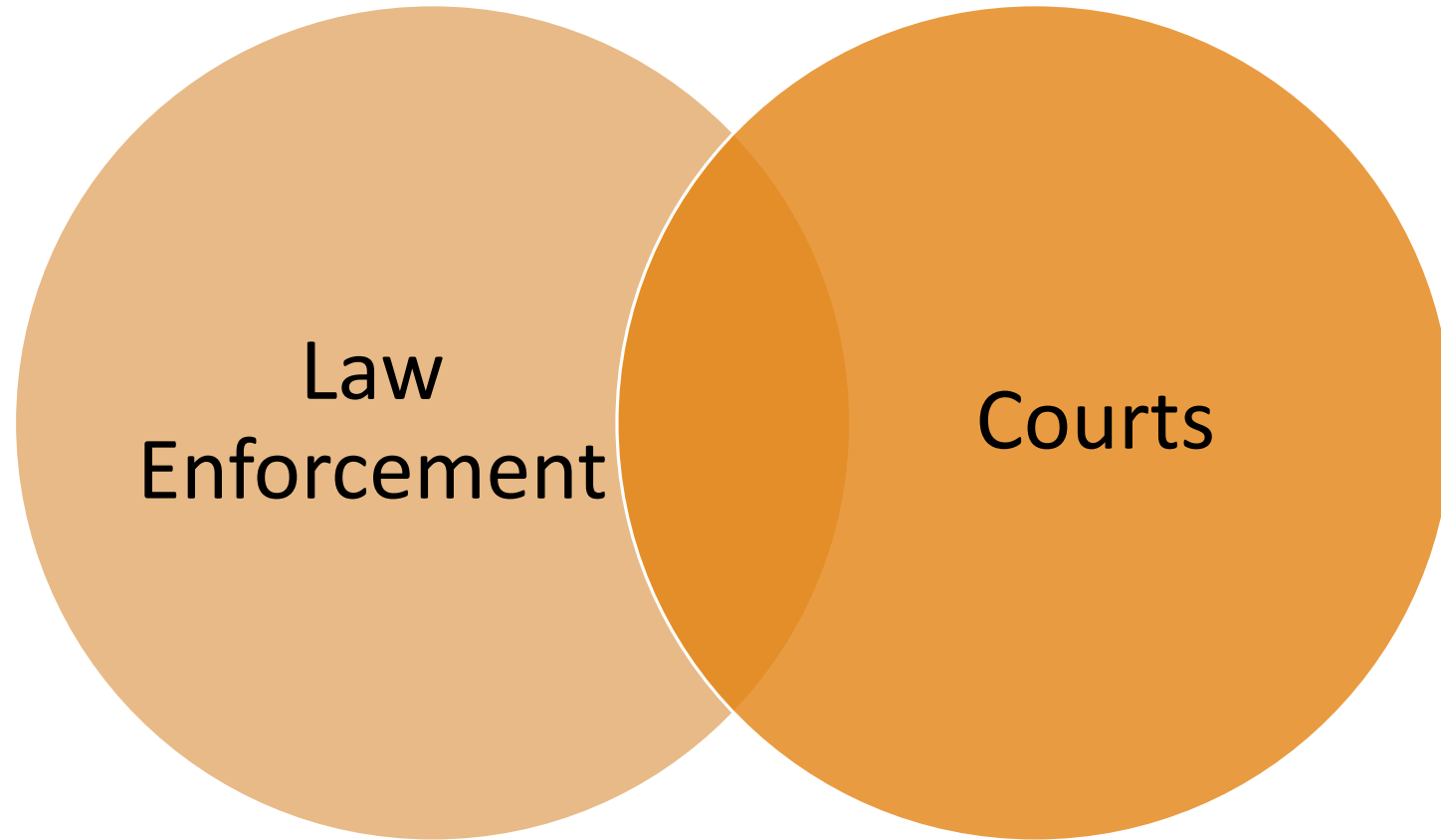
- This is also known as a form of due process.
- This concept demonstrates that the defendant has been given notice of the allegations alleged; and provided with notice of hearing on the matter and a meaningful opportunity to be heard on the matter.

Tip: Drafting Provisions Relevant to Due Process Reasonable Notice and Opportunity to be Heard

- Identify whether the defendant has been served with a copy of the petition in compliance with the tribal statute.
- Identify whether the court date has been scheduled according to any timelines set out in the tribal statute.
- If the defendant appeared, was the defendant provided an opportunity to tell the defendant's side of the story or ask questions of the petitioner?

Tribal-State Collaborations to Support Enforcement of Protective Orders

Tribal-State Collaboration



Identifying the Issues or Barriers to Enforcement

How can you evaluate whether the states or other tribes are enforcing tribal protection orders?

- Tribal Coalitions.
- Reports from advocates.
- Reports from victims to advocates.
- Data.
- Meetings with state prosecutors in your area.
- Meetings with state law enforcement in your area.

How to Foster Tribal-State Collaborations

- Conduct meetings with stakeholders.
- Discuss pressing issues that are of mutual concern.
- Identify opportunities to share resources and collaborate.
- Formalize collaborations where necessary or appropriate.
- Identify opportunities to educate law enforcement and/or court officials.

Example of a Meeting to Support Collaboration

- On Dec. 6, 2017 a meeting was hosted to bring together participants from a wide variety of disciplines from state and tribal jurisdictions :
 - Law enforcement
 - Courts
 - Service providers
- **A Report: Emerging Strategies in Tribal-State Collaboration: Barriers and Solutions to Enforcing Tribal Protection Orders**
 - Only one true legal barrier was identified by the participants. ***Tribal orders that are not eligible for full faith and credit under VAWA due to one of the following common legal deficiencies:***
 - Insufficient facts to exercise jurisdiction,
 - Insufficient facts that a protection order was violated, and
 - Inadequate notice.

Full report authored by Jennifer Walter and Heather Valdez Freedman accessible at: [Emerging Strategies in Tribal-State Collaboration: Barriers and Solutions to Enforcing Tribal Protection Orders Meeting Report | Tribal Protection Order Resources](#)

Resource Sharing To Support Collaboration

Resource Sharing might include, but is not limited to:

- Personnel: Cross deputization agreements.
- Education: Training and certification programs or opportunities.
- Written Resources: Sharing departmental policies and procedures.

*Education to
Support
Collaboration and
Enforcement of
Protection Orders*

Education is a key to improving enforcement outcomes for protection orders.

Educational opportunities for Law Enforcement:

- Police academies.
- Continuing Education Units.
- Multi-jurisdictional forums or task forces.
- In-Service training.

Educational opportunities for Court Personnel:

- Judicial Training Events (many states host annual events for state judges).
- Continuing Legal education events or opportunities (such as those offered through the National Judicial College).
- Multi-jurisdictional Forums (State-Tribal Court Committees).

Examples of Cross-Jurisdictional Collaboration to Strengthen Enforcement of Tribal Protection Orders

- Alaska
- California
- Washington
- Oregon

Alaska Attorney General Opinion (2016)

The Attorney General's Office determined in the Opinion that federal law preempts state law in this case. *This means that local and state law enforcement can, and in fact must, enforce tribal protection orders just as if those orders were issued by the State, so long as the criteria under VAWA are met. This means that the court issuing the order must have jurisdiction and provided due process.*

Also, the purpose of the order must be for “the protection of victims of domestic violence, sexual assault, dating violence, or stalking,” or the prevention of violent or threatening acts against another person. (Emphasis added).

Alaska Attorney General Opinion, July 30, 2015, 2016 WL 4699349 (Alaska A.G.) found at [Violence Against Women Act and tribal protection orders \(alaska.gov\)](#).

California DOJ Information Bulletin No. DLE-2016-03, 11/29/16, Subject: Enforcement of tribal protection orders

- California DOJ Information Bulletin, No. DLE-2016-03, 11/29/16, Subject: Enforcement of tribal protection orders.
- Presentation of Protection Order that identifies protected party and person against whom enforcement is sought and, on face, appears to be currently in effect constitutes probable cause to believe valid tribal Protection Order exists.
- Enforce as if California court order.
- In absence of order itself, may consider other order information to find probable cause that order exists.
- Cannot require for enforcement purposes:
 - Certified tribal court order.
 - Registration or filing of tribal order with California.
 - Verification in state database.
- [Information Bulletin - Enforcement of Tribal Court Protection Orders \(ca.gov\)](#)
- [Tribal-RecognEnf Brochure.pdf \(ca.gov\)](#)

Washington State Attorney General Opinion 2018

1. Does Washington have an obligation to enforce protection orders issued by the courts of other states or by Indian tribal courts?
2. If Washington has such an obligation, is registration of a protection order in a Washington state court a prerequisite to enforcement?

BRIEF ANSWERS

1. Yes. Federal law, 18 U.S.C. § 2265, requires that any protection order issued by the court of a state or Indian tribe be accorded full faith and credit and enforced by the court of another state or Indian tribe, if the protection order is consistent with 18 U.S.C. § 2265(b). The Washington Foreign Protection Order Full Faith and Credit Act, RCW 26.52, implements this requirement in Washington.
2. No. Under 18 U.S.C. § 2265(d)(2), a protection order issued by a state or Indian tribe must be accorded full faith and credit regardless of whether it is registered or filed in the court of the enforcing state or Indian tribe. Washington law permits protection orders to be filed without cost, but filing is not a prerequisite to enforcement. RCW 26.52.030.

[Washington State Attorney General Opinion Tribal Protection Orders](#)

Oregon Joint Memorandum January 2020 memo from Oregon Attorney General and US Attorney re: Official Guidance for Enforcement of Tribal Protection Orders/Foreign Restraining Orders

Tribal protection orders, referred to as foreign restraining orders under state law, are civil orders of protection issued by tribal courts to prevent future domestic violence. State and federal law under the Violence Against Women Act (VAWA) require full faith and credit for these orders, meaning all states must uphold protective orders from any other state and from any tribal nation.

“Protecting public safety and the fair administration of justice requires steadfast partnership among local, state, tribal, and federal law enforcement agencies. When we fail to uphold tribal restraining orders, we leave Native women vulnerable to human trafficking and violence, contributing to the Missing and Murdered Indigenous Women and Persons epidemic,” said U.S. Attorney Williams. “When we grant full faith and credit for tribal restraining orders, we are working collaboratively across jurisdictions to ensure all Oregonians enjoy the same court-ordered protections regardless of who they are, or where they live or travel in the state.”

Enforce facially validity PO

- **Issued by court.**
- **Not expired.**
- **Parties involved are persons in Protection Order.**

Joint memo available at <https://www.justice.gov/usao-or/page/file/1241026/download>

Resources

Tribal Law and Policy Institute

- www.tribalprotectionorder.org

National Center on Protection Orders and Full Faith and Credit

- www.fullfaithandcredit.org

Walking on Common Ground

- www.walkingoncommonground.org

Protection Order Checklist

- https://c305bcdd-de35-434b-8752-67d5722025ff.filesusr.com/ugd/3fb28d_bd4f49b0294e4c2f9efe5d5d19c7f490.pdf

THANK YOU!!!

Questions?

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