



NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

Civil Protection Orders

Full Faith and Credit: Bench Card Series

Civil Protection Orders (CPOs) are an important tool available to victims of intimate partner violence and, in some jurisdictions, also available to address non-intimate partner sexual assault and stalking. They can provide victims with much needed legal relief to assist them in establishing safety apart from their abuser, such as prohibiting contact; staying away from the victim, their residence, their workplace, their children's school or day care; ordering temporary child-related relief and support; transferring possession of a shared residence or personal property; ordering the removal of firearms; and/or anything else the court deems necessary to protect the victim and/or the victim's children.

For CPOs to be an effective tool, they must be enforceable. These bench cards are intended to be a reference for judges to assist them in ensuring the orders they issue are readily enforceable in and beyond their own jurisdictions, and to provide guidance on proper enforcement of valid orders issued by other courts. The following topic cards are included in this resource and are hyperlinked in the boxes to the right for your convenience:

- 1 **Civil Protection Order Basics**
- 2 **Issuing Court Checklist**
- 3 **Enforcing Court Checklist**
- 4 **Child Related Relief**
- 5 **Child Related Relief - Tribal Considerations**
- 6 **Firearms**
- 7 **Applicable Laws**
- 8 **Additional Information and Resources**

CIVIL PROTECTION ORDER BASICS

BENCH CARD 1



What Is the Violence Against Women Act (VAWA)?

Enacted in 1994, and amended through reauthorization in 2000, 2005, 2013, and 2022, VAWA recognizes the severity of domestic violence, sexual assault, stalking, and dating violence and provides federal funding to help communities address the needs of victims/survivors and hold offenders accountable.



What Is the Full Faith and Credit Provision of VAWA?

The Full Faith and Credit provision of VAWA requires every jurisdiction in the United States to recognize and enforce valid protection orders issued in any jurisdiction in the United States (see 18 U.S.C. § 2265(a)).



What Is a Protection Order Under VAWA?

Under VAWA, a protection order is broadly defined to include “any injunction, restraining order, or any other order issued by a civil or criminal court” for the purpose of preventing violence, threats, or harassment, 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” (see 18 U.S.C. § 2266(5) for the full definition).

Please Note: The terms “protection order” and “order” are used interchangeably on these bench cards to refer to orders issued by civil and criminal courts.



What Type of Orders May Qualify Under Full Faith and Credit?

Any state, Tribal, territorial, or local court order enjoining one person from threatening, harming, harassing, stalking, approaching, or contacting another person, including a victim and family members of the victim, so long as the enjoined person had or will have notice and an opportunity to be heard. These may include:

- Temporary, ex parte, or final protection orders;
- Child custody, visitation, and support provisions contained within a protection order;
- Bond orders and pre-trial release orders;
- Orders issued as a condition of diversion, alternative sentencing, probation, or parole;
- Temporary and final protection orders issued as part of divorce, custody, or other family law proceedings;
- Sexual assault protection orders;
- Peace orders (sometimes called anti-harassment orders; a court order offering protection from abuse to certain classes of persons who are not eligible to petition for a protection order) issued to prevent violent or threatening acts or harassment against, sexual violence, or contact or communication with or physical proximity to another person;
- Consent orders issued upon the parties' agreement (provided the orders meet all of the qualifying elements, including notice and opportunity to be heard);
- Juvenile court orders;
- Alternative dispute resolution, mediation, and collaborative law orders that are signed by a judge and that have the requisite elements (i.e., notice and an opportunity to be heard, and issued to prevent violent or threatening acts or harassment, sexual violence, or contact or communication with or physical proximity to another person); and
- Elder abuse protection orders and guardianship orders.

Please Note: Mutual orders issued by a state, Tribal, or local court, which provide relief against the original petitioner as well as the respondent, are generally entitled to full faith and credit only against the respondent and are generally not enforceable against the original petitioner.



What Are VAWA No-Cost Provisions?

Courts should not charge a victim of domestic violence, dating violence, stalking, or sexual assault any costs associated with the filing, issuance, registration, modification, enforcement, dismissal, withdrawal or service of protection orders, whether issued by civil or criminal courts, including intra- and inter-jurisdictional orders. This no-cost provision also applies to any fees or costs associated with a criminal matter related to domestic violence, stalking, dating violence, and sexual assault. Charging any of these costs will render a jurisdiction ineligible for certain VAWA funds. For more information on nocost provisions, see the U.S. Department of Justice, Office on Violence Against Women's [Frequently Asked Questions on STOP Formula Grants](#).



Ensuring a Climate of Safety in the CPO Process

- Informed petitioners are better equipped to make decisions about what options are safest for them. Create a system where petitioners have options, information, and access to resources. Information should be in plain language and available in all languages commonly spoken in the community.
- Provide leadership to ensure the establishment of clearly defined, user-friendly policies and procedures for the issuance, modification, service, and enforcement of protection orders. Incorporate these policies and procedures into regular training with court staff and community partners.
- Collaborate with domestic violence programs to provide referrals and information on advocacy services to victims seeking protection, whether they ultimately receive a protection order or not.
- Participate in your local community coordinated response to develop user-friendly forms for issuance and enforcement of protection orders and to address issues with access and enforcement as they arise. For more information on courts and community coordinated response, [see this webinar](#). For more information on extra-judicial activities and judicial leadership, [see this document](#).
- For out of state enforcement, provide information on the face of protection orders about how the court can be contacted (including the court's telephone number and address) and be willing to contact courts of other jurisdictions to clarify issues and questions if they arise.



Creating a Trauma-Responsive Courtroom

- Collaborate with domestic violence and other trauma informed programs. For more information specific to trauma and domestic violence, see the [National Center on Domestic Violence, Trauma, and Mental Health](#).
- Listen to stakeholders, litigants, and community members about their perceptions and experiences in the court and making changes to improve the courtroom environment and experience. For more information, see the [Family Court Enhancement Project](#).
- Promote the tenets of procedural justice to improve access and the administration of justice. Procedural justice, sometimes called procedural fairness, tenets help ensure litigants feel heard and have a voice in the process, are treated with respect and dignity, court policies and judicial decisions are explained to ensure transparency and that litigants understand them, and decision makers are impartial. For more information, see [the Center for Justice Innovation](#) and the [National Center for State Courts](#).
- For more information on creating trauma-responsive courts, see NCJFCJ's [Linking Systems of Care: How Four Jurisdictions Are Coordinating Services](#); [NCTSN Bench Card for the Trauma-Informed Judge](#); [What Can Juvenile and Family Courts Do to Respond to Trauma?](#); Webinar: [Trauma Series: Part III – Creating a Trauma-Responsive Court System](#). See also National Center for State Courts' [Trauma and Trauma-Informed Responses](#).



Ensuring Meaningful Language Access

Pursuant to Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d), courts must ensure meaningful access for those with limited English proficiency (LEP). Courts should not only ensure that appropriate interpreters are provided for court hearings and trials at no cost to the LEP individuals or litigants, but also provide court information and resources regarding CPOs in languages commonly spoken in the community. For more information on courts and their duties regarding language access, see the US Department of Justice Civil Rights Division's [Ensuring Language Access in the Courts](#). For information on implementing language access, see the Asian Pacific Institute on Gender-Based Violence's [Interpretation Technical Assistance and Resource Center](#) and the National Center for State Courts' [Language Access Services Section](#). For information on language access for Deaf litigants, see Activating Change's [End Abuse of People with Disabilities](#).



Creating a Trauma-Responsive Courtroom

CPO proceedings often involve self-represented litigants (SRLs), which can be challenging for judicial officers. Many CPO statutes are specifically written to ensure access to the CPO system whether the litigants are represented by legal counsel or not. To assist in ensuring access to the courts, judicial officers may consider the following:

- Treat all parties in the same manner and with respect and dignity.
- Explain the procedures for each hearing, using plain language as much as possible.
- Explain any evidentiary rulings and other legal issues as needed.
- Taking steps to elicit the information needed for decision-making, using non-confrontation questioning to elicit details when necessary.
- Granting continuances so that parties may get legal assistance or gather additional evidence when needed.
- Ask Parties if there are questions or anything else parties want you to know before adjourning their case.
- For more information, see [Assisting Self-Represented Litigants in Domestic Violence Cases](#) from the Center for Justice Innovation.



Petitioner Requests for Dismissal

It can be frustrating for judicial officers when victim/petitioners return to the courthouse to dismiss or withdrawal their CPO orders. Balancing victim autonomy and concerns for safety is a difficult but crucial part of creating orders that meet the individual needs of victims. While judicial officers may not be able to have in-depth discussions with petitioners wishing to drop their orders, ensuring access to advocates for immediate and long-term safety planning and to discuss different options is incredibly important.



Mutual Protection Orders

A mutual protection order is a single order that provides relief against the original petitioner as well as the respondent. This relief can include no contact or stay away provisions as well as requiring the petitioner to participate in counseling or other programs. Such orders should not be issued. Instead, in order to ensure due process, courts should require the respondent to file a separate petition or complaint for a protection order, make a specific finding that each party (including the respondent) is entitled to relief, and issue a separate order. Mutual orders are fully enforceable against the respondent. Provisions against the petitioner, however, are not entitled to interstate/tribal enforcement unless (a) a cross or counter petition, complaint, or other written pleading was filed by the respondent seeking such a protection order; and (b) the court made specific findings that each party was entitled to such an order (18 U.S.C. § 2265 (c)).



Criminal Protection Orders and full faith and credit

The full faith and credit provision of VAWA applies to qualifying criminal protection orders. Criminal protection orders are generally issued as a condition of release, probation, or parole. There may be a lack of arrest authority in the enforcing jurisdiction. The enforcing court should enforce criminal orders if permitted under their jurisdiction's laws. If enforcement of the criminal protection order is not permitted, law enforcement should respond to any underlying crimes committed in the local jurisdiction and should contact the issuing court, which will determine whether to seek extradition so that it can address the protection order violation.



Tribal Court Protection Orders and full faith credit

The full faith and credit provision applies to qualifying Tribal court protection orders. State courts are required to recognize and enforce valid Tribal court protection orders. Regardless of the originating court, Tribal courts have full civil jurisdiction to enforce protection orders against any respondent (including non-Indian offenders) by means of civil contempt proceedings, exclusion from Indian lands, and other appropriate mechanisms (18 U.S.C. § 2265(e)). In addition, under VAWA, Tribes meeting certain requirements can exercise Special Tribal Criminal Jurisdiction ([25 USCA § 1304](#)) over non-Indian respondents who violate protection orders. More information can be found [here](#). Technical assistance providers specializing in tribal court orders can be found on [Card 8 – Additional Information and Resources](#).



Military Protection Orders

Military protective orders (MPOs) are orders issued against a service member, generally by the service member's command. MPOs do not meet the due process requirements under VAWA requirements to receive full faith and credit from state or Tribal courts. The Armed Forces Domestic Security Act, 10 U.S.C. § 1561(a), however, provides that civilian protection orders shall have the same force and effect on a military installation as such orders have within the issuing jurisdiction. MPOs can be included in the National Criminal Information Center's Protection Order File (NCIC-POF), and the installation can be contacted regarding any violations committed off the installation. There may be issues surrounding the service of civilian orders on military installations. State courts should develop agreements with local military installations concerning military service and enforcement of state court protection orders. For more information, see DoD Instruction Number 6400.06. DoD Instructions often change and new changes regarding the military's response to domestic violence are forthcoming. Current Instructions can be located [here](#) by scrolling to DoDI 6400.06.



Civil Protection Orders

BENCH CARD 2

ISSUING COURT



Ex Parte Orders

- Issue orders for all eligible relationships:
- Include all form of relief to which petitioner is entitled. This includes:
 - Facilitate service of process by incorporating the guidance in this [document](#).



Final Orders

- Issue orders for all eligible relationships:
- Use hearings to elicit testimony regarding context of the abuse and effects and relief needed. For questions about the [SAFeR CPO tool](#), contact NLCCDV@bwjp.org; For more information on engaged neutrality, see [this article](#) from Richard Zorza.
- Include all forms of relief to which petitioner is entitled. This includes:
 - Firearms non-possession/surrender ([See Card 6 – Firearms](#))
 - Custody, visitation, and/or support ([See Card 4 – Child-Related Relief](#) and [Card 5 – Child-Related Relief: Tribal Considerations](#))
 - Stay-away/no-contact/no-abuse
 - Prohibition on tech-related abuse (For more information on technological abuse and protection orders, see the Technology Part II section of the CPO Guide: Issues in Focus Technology)
 - Prohibition on financial abuse
 - Economic/financial relief (For more information, see [this document](#); also see [this guidebook](#) from the Center for Survivor Agency and Justice)
- Include notification to respondent regarding federal and state firearm prohibitions that may apply. For more information, see [this Judicial Checklist](#) from the Battered Women's Justice Project's National Center for Protection Orders and Full Faith and Credit.



Facilitating Enforcement of All Orders

- Use clear and concise language in a legible order.
 - Avoid vague and unenforceable terms such as “reasonable.” For example, in orders involving no contact or stay away provisions, include, when appropriate, the exact distance that a respondent must stay away.
 - Do not leave important terms of the order “upon the agreement of the parties.” When prohibiting contact or communication, provide specific examples of the prohibited activities (e.g., using telephone, fax machine, electronic mail, and third-party contacts).
 - Be sure that law enforcement can easily read, understand, and identify enforceable provisions in the order.
- Indicate on the face of the order that the respondent had or will have notice and an opportunity to be heard within the time required by the law of the issuing jurisdiction. Have the respondent, if present, sign an acknowledgment of service on the order.
- Make a written finding that the court has personal and subject matter jurisdiction to issue the protection order.
- Make specific written findings of abuse and indicate that the abuse meets the statutory standards for issuance of a protection order.
- State the order’s expiration date, if any, or state that the order is a lifetime or permanent order.
- Cite the statute upon which the court’s decision and order are based. Where applicable, cite the statutory provision upon which specific relief is based (e.g., provisions providing for specific economic relief or catch-all provisions).
- Facilitate full faith and credit enforcement:
 - Indicate in writing or certify on the order that the order complies with VAWA’s Full Faith and Credit provision (18 U.S.C. § 2265) and meets the protection order definition under 18 U.S.C. § 2266. ([See Card 7 – Applicable Laws](#))
 - Include language that explains how the current order adopts, modifies, overrules, or supersedes prior protection order provisions or orders from your or any other jurisdiction.
 - Include in orders the typed name of the judge, the address and phone number of the court, and where available, the court’s email contact information, the state protection order registry telephone number, and any other useful contact information for the court.
 - Ensure that orders are entered, as soon as possible, into the Protection Order File of the National Crime Information Center (NCIC POF) and all other accessible databases; ensure that numerical identifiers [SSN, DOB, Driver’s License #, etc.] are obtained from respondents to facilitate entry.
 - Consult with the enforcing court, if requested, to clear up ambiguities, verify validity, and establish the status of service.
 - Ensure interstate enforceability of child-related provisions. ([See Card 5 – Child Related Relief](#))
- Note that civilian orders are entitled to enforcement on military installations, but military orders are not entitled to enforcement in civilian courts (see 10 U.S.C. § 1561(a)) (For more information on military protective orders, see the [CPO Guide: Issues in Focus section on Military Protection Orders](#))
- Tribal court protection orders: Tribal courts can facilitate enforcement of their protection orders by ensuring compliance with the requirements of 18 U.S.C. § 2265, as described above; such orders must be honored and enforced by all state, U.S. Territorial, and Tribal courts and law enforcement as if they were orders of the enforcing jurisdiction.



Complying with Legal Requirements

Do not charge victims of domestic violence, dating violence, stalking, or sexual assault any costs associated with the filing, issuance, registration, service, or enforcement of civil or criminal protection orders, including intra- and inter-jurisdictional orders. ([See Card 1 – CPO Basics under VAWA No-Cost Provisions](#))

Do not issue mutual orders: single orders that provide relief against the original petitioner, as well as the respondent. Instead, require the respondent to file a separate petition or complaint for a protection order and, where appropriate, make a specific finding that each party (including the respondent) is entitled to relief and issue a separate order. Mutual orders are not entitled to full faith and credit against the petitioner except under very limited circumstances. ([see Card 3 – Enforcing Court card for more information](#))

Do not post on a publicly available Internet site that a protection order has been registered, filed, or issued in your jurisdiction (18 U.S.C. § 2265(d)(3)).

For information on virtual or hybrid hearings, see the Joint Technology Committee of the Conference of chief Justices, et al., [Remote Hearings and Access to Justice: During COVID and Beyond](#), National Center for State Courts (2020); and the National Council of Juvenile and Family Court Judges, [Improving Safety and Privacy in Civil Protection Order Cases: In-Person and Virtual Court Considerations](#) (2022).



Immigrant Victims

Immigrant victims face difficult challenges. VAWA offers some solutions, including immigration relief for victims in certain situations. In fact, obtaining a protection order may assist some victims with qualifying for such relief. Because the issues are technical and require expert consultation, courts should provide general information regarding resource referrals. In some cases, it may be prudent to suggest the victim consult with an informed advocate or attorney before entering orders that may compromise the victim's safety or immigration status. See below for technical assistance providers specializing in immigration relief available to battered immigrants.

Please Note: To the extent needed, courts should provide language-appropriate interpreters who are trained in domestic violence for all parties.



Civil Protection Orders

BENCH CARD 3

ENFORCING COURT



Court-Based Compliance Monitoring and Enforcement

- Consider implementing compliance review hearings after issuance of protection orders.
 - Set compliance hearings at issuance of orders.
 - Notify petitioners and invite participation (not mandatory).
 - Review hearings can address compliance with firearms surrender, orders to participate in abusive partner intervention program and other interventions, economic relief requirements, custody/visitation provisions, etc.
 - Assign court personnel as compliance officers/case managers to set respondents up for success and monitor compliance/report to court.
 - For guidance regarding implementation of compliance monitoring, [see this spotlight](#) on DeKalb County, Georgia's Compliance Review Docket and [this webinar](#). Also see [this video](#) from the Center for Justice Innovations.



Enforce Orders from Other Jurisdictions in Compliance with FFC Requirements

- VAWA's Full Faith and Credit provision (18 U.S.C. § 2265) requires every jurisdiction in the United States to recognize and enforce valid protection orders.
- These jurisdictions include:
 - States and their political subdivisions;
 - Tribal governments;
 - The District of Columbia; and
 - All commonwealths, territories, or possessions of the U.S. (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands).
- Required elements for enforceability:
 - The respondent has been given notice and an opportunity to be heard, or, in the case of an ex parte order, the respondent will be given notice and an opportunity to be heard within a reasonable time, consistent with the requirements of due process.
 - The issuing court had personal and subject matter jurisdiction to issue the order.
 - The order has not expired.

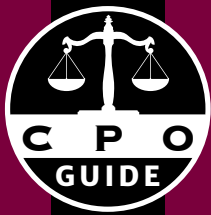
Enforce Orders from Other Jurisdictions in Compliance with FFC Requirements (Cont.)

- The enforcing court must enforce the terms of the order as written by the issuing jurisdiction, even if the enforcing jurisdiction lacks authority to enter such terms, e.g.:
 - The category of protected persons would not be eligible for relief in the enforcing jurisdiction (e.g., dating partners, same-sex partners);
 - The order contains relief unavailable in the enforcing jurisdiction;
 - The order has a longer duration than provided for in the enforcing jurisdiction; or
 - The order calls for surrender of weapons and the enforcing jurisdiction has no such provision.
- The enforcing court uses its own enforcement procedures:
 - Treat the violation as a criminal offense if authorized for its own orders, if it is criminalized in the enforcing jurisdiction.
 - Issue orders to take physical custody of children if so authorized. ([See Card 4 – Child-Related Relief under enforcement of custody provisions](#))
 - Award attorney's fees if sought and authorized.
 - Impose other sanctions for violations as authorized.
- Do not notify the respondent or post on a publicly available Internet site that a protection order has been registered, filed, or issued in your jurisdiction (18 U.S.C. § 2265(d)(1) and (3)).
- Do not require registration/filing or notice of either as a prerequisite for enforcement of valid protection orders from other jurisdictions (18 U.S.C. § 2265(d)(2)).



Facilitating Protection

- Communicate with the issuing court to clear up ambiguities, verify validity, and establish the status of service if these issues are raised.
- Ensure that court clerks and staff are familiar with and comply with the provisions of VAWA/Full Faith and Credit and provisions of federal grant programs that prohibit charging fees and costs associated with the filing, issuance, registration, service, or enforcement of protection orders. (For more information, see [Card 1 – CPO Basics under VAWA No-cost Provisions](#))
- Provide protected parties with the National Domestic Violence Hotline number: (800) 799–SAFE, TTY (800) 787–3224 and information on local victim services.
- Inform the issuing court of the disposition of any enforcement proceeding by filing a copy of the order with the issuing court.
- Initiate discussions with contiguous jurisdictions regarding procedures for cross enforcement of protection orders.



Civil Protection Orders

BENCH CARD 4

CHILD CUSTODY

CHECKLIST FOR USE ON THE BENCH



Issuance of Custody Provisions

- Assess whether the court has subject matter jurisdiction to include a custody/parenting time provision in the order.
 - Such provisions must be authorized by the jurisdiction's protection order statute and must comply with the issuing jurisdiction's version of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).
 - For a step-by-step description of how to assess UCCJEA jurisdiction, contact the [Legal Resource Center on Violence Against Women](#) (LRC) for a copy of their judicial guide.
- Jurisdiction under the UCCJEA usually is available under home state jurisdiction or temporary emergency jurisdiction
 - Home state jurisdiction applies if the issuing state is the home state at the time of filing, or it was the home state within six months of filing and one parent remains in the state. The UCCJEA defines the home state (in part) as the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding, which includes custody and visitation provisions issued in protection orders. This jurisdictional basis trumps other jurisdictional bases, except that another court may exercise temporary emergency jurisdiction for a limited period of time after communicating with the home state court as noted below.
 - Temporary Emergency Jurisdiction: If the issuing state is not the home state, the custody provision likely would be issued under this jurisdictional basis, which applies if the child is present in the issuing state and it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse. Note: Entry of a custody provision on this basis requires that the court communicate with the court in the home state (if a custody proceeding has been initiated there) to decide, among other things, how to resolve the emergency, how best to protect the parties and child, and the duration of the order.
- State clearly on the protection order that the custody or visitation provision has been issued in compliance with the UCCJEA's notice, opportunity to be heard, and jurisdictional requirements and indicate the applicable jurisdictional basis.
- Exercise the court's authority to include custody/parenting time provisions in the order.
 - Where appropriate for safety reasons, consider giving the petitioner sole custody for the duration of the order and eliminate or limit the respondent's contact with the children.
- Facilitate enforcement of the order by:
 - Explaining to parties that custody and visitation provisions within protection orders are temporary and are not valid upon expiration of the protection order. If applicable, inform parties about where they can go to get a permanent custody and visitation order.

Issuance of Custody Provisions (Cont.)

- Stating in the order that it has been issued in compliance with the UCCJEA's notice, opportunity to be heard, and jurisdictional requirements and indicate the applicable jurisdictional basis.
- Stating that custody/parenting time provisions within protection orders are enforceable under VAWA's Full Faith and Credit provision and, where applicable, under the UCCJEA.
- Issuing custody and visitation provisions that are specific and detailed:
 - State the children's names, dates of birth, and which provisions relate to each child.
 - State the type of custody granted (legal vs. physical—or the equivalent terms used in the jurisdiction—or both).
 - Include specific parenting time (visitation) provisions. If parenting time is allowed, include whether parenting time or exchange is to be supervised, and the place, time, length of stay, and how holidays and birthdays will be handled.



Modification of Custody Provisions

- Assess whether the court has subject matter jurisdiction to modify an existing custody/parenting time provision.
 - If the existing provision is within an unexpired protection order or a stand-alone custody determination, consult the UCCJEA's continuing exclusive jurisdiction and modification provisions to determine whether or not the court can modify the provision (including by issuing a new protection order).
- In general, the court in the new state would be authorized to enter a new protection order that includes modified custody/parenting time provisions if the court finds that it has emergency jurisdiction under the UCCJEA.
 - The requirements for emergency jurisdiction discussed above apply, including the requirement that the court communicate with the original issuing court.
- For a description of how to assess UCCJEA modification jurisdiction, consult the [LRC](#).
- Allow jurisdictional arguments to be made and ensure that the court has jurisdiction before entering the new protection order.
- Communicate with the original issuing court, even when not specifically required under the statute, to discuss whether the issuing court still has jurisdiction, which court is the most convenient forum, and which court can provide the best protection for the at-risk parent or child.
- If the court has jurisdiction to enter a new protection order that includes modified custody or visitation provisions, it should:
 - Ensure that custody provisions within the protection order are consistent with the stay away provisions of the same order.
 - Take judicial notice of all other existing court orders that relate to a family's custody and visitation rights and obligations; if the court's actions affect the terms of those other orders, reference those changes explicitly within the new order, noting whether the new order overrules, modifies, extends, or otherwise amends those other orders.
 - Inform the parties that they may seek to modify the original order in the appropriate jurisdiction if they desire to make any changes in custody or visitation arrangements permanent.
 - Provide copies of any new orders to the issuing court.

CHECKLIST FOR USE ON THE BENCH



Enforcement of Custody/Parenting Time Provisions Under VAWA

- Pursuant to VAWA's Full Faith and Credit provisions (18 U.S.C. § 2266(5)(B)), enforce "any support, child custody, or visitation provisions, orders, remedies or relief issued as part of a protection order" provided the other requirements of the statute are satisfied:
 - The respondent has been given notice and an opportunity to be heard, or, in the case of an ex parte order, the respondent will be given notice and an opportunity to be heard within a reasonable time, consistent with the requirements of due process.
 - The issuing court had personal and subject matter jurisdiction to issue the order.
 - The order has not expired.
- Enforce custody/parenting time provisions within ex parte protection orders under VAWA, where the respondent will be given notice and an opportunity to be heard within a reasonable time, consistent with the requirements of due process.
 - Note that ex parte custody/parenting time orders are not enforceable under the UCCJEA, which requires notice and an opportunity to be heard.
- Enforce custody and visitation provisions the same way as no contact or stay away provisions (i.e., finding the offender in contempt of court, determining that the violation constitutes a misdemeanor crime, or whatever other enforcement mechanisms the court may use, including, if permitted under state law, directing law enforcement to recover the child).
- Enforce custody and visitation provisions within protection orders as they are written by the issuing jurisdiction, even if the enforcing jurisdiction cannot make the specific custody or visitation order under its state law.
- Provide the issuing court with copies of any orders issued by the enforcing court during the enforcement process.



Enforcement of Custody/Parenting Time Provisions Under the UCCJEA

- Enforce the custody/parenting time provisions under Article 3 of the UCCJEA, which provides additional enforcement mechanisms if the custody and visitation provisions were issued in compliance with the UCCJEA.
- To determine whether the provisions comply with the UCCJEA, assess whether the issuing court had jurisdiction under one of the jurisdictional bases described in the issuance section above.
- Reference all statutory authorities when enforcing the custody or visitation terms within the protection order.
- Comply with the UCCJEA enforcement provisions that afford the other parent an opportunity to contest the validity of the order; validity can be challenged only on limited grounds and any findings of abuse may not be relitigated. (see the official comments to the UCCJEA available [here](#).)
- Use the authority under the UCCJEA to issue a warrant to take physical custody of the child where appropriate in an emergency.
- In enforcement or modification actions, take steps to keep the victim's and children's address confidential under applicable state laws.
- Provide the issuing court with copies of any orders issued by the enforcing court during the enforcement process.



Steps to Take if There Are No Enforceable Custody/Parenting Time Provisions

- Where a protection order is silent on custody or visitation or any such provisions are unenforceable under VAWA or the UCCJEA and resolution of the custody or visitation issues is integral to maintaining the safety of the victim and the children, the court should:
 - Exercise jurisdiction under the state's protection order statute to issue a new protection order that includes custody/parenting time provisions.
 - Exercise emergency jurisdiction under the UCCJEA to issue a temporary custody order when the court does not have jurisdiction to enter a new protection order (if, for example, it lacks personal jurisdiction over the abuser, in states that require personal jurisdiction). The court does not need to have personal jurisdiction over the other parent to issue a valid custody order under the UCCJEA.



Child Support Provisions

- Enforce child support provisions as written.
- Be mindful that child support enforcement strategies may raise safety concerns for victims; consult with victims regarding their wishes. For example, steps may need to be taken to keep the victim's and children's address confidential under applicable state laws.
- Ask the parties to disclose if there are any pending or existing child support decisions in any other court and, if possible, check the issuing court's database or court records.
- Child support provisions within protection orders are also enforceable under the Full Faith and Credit for Child Support Orders Act (28 U.S.C. § 1738B) and the state version of the Uniform Interstate Family Support Act (UIFSA). UIFSA provides additional enforcement mechanisms for such provisions, including direct income withholding.



Checklist for Judicial Leadership

- Ensure that court personnel respond to requests for information from out-of-state parties, including about court filings, issued orders, notice of hearings, proof of service, and how to request a continuance, providing as much information as possible.
- Ensure that court personnel inform litigants about the availability of remote appearances and how to request and participate in them.
- Ensure that court personnel assist litigants with interstate custody cases, including:
 - Helping litigants to identify the correct forms to complete, including the required UCCJEA certification/affidavit.
 - Assisting litigants to understand what documentation they must provide regarding cases and orders from other jurisdictions.
 - Referring victims who have legal questions about interstate custody cases to qualified attorneys, including legal services.



Civil Protection Orders

BENCH CARD 5

STATE-TRIBE CHILD CUSTODY JURISDICTION ISSUES



State Court Enforcement of Tribal Custody Orders

- All states have adopted an optional provision of the UCCJEA requiring enforcement of custody determinations made by Tribal courts in accordance with the UCCJEA's jurisdictional standards.
- To be recognized and enforced under the UCCJEA, the order must be made in substantial conformity with the UCCJEA.
- Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.) proceedings are excluded from this provision; note that the ICWA explicitly does not apply to custody cases between biological parents (it applies to such proceedings as foster care placement, termination of parental rights, pre-adoptive and post-adoptive placement proceedings involving Indian children).
- The federal Parental Kidnapping Prevention Act (PKPA) requires states to honor and enforce custody orders issued by sister states.
- Courts are divided over whether the PKPA applies to Tribal jurisdictions. Some state courts and Tribal courts have held that the PKPA requires tribal courts to give state court orders full faith and credit (See *In re Larch*, 872 F.2d 66, 68 (4th Cir. N.C. 1989); *Eberhard v. Eberhard*, 24 Indian L. Rptr. 6059, 6060 (Cheyenne River Sioux Tribal Ct. App. 1997)). Other courts have concluded that the PKPA does not define Indian Tribes as “states” (unlike other federal laws), so the PKPA does not apply to Tribes (See, e.g., *Nygaard v. Taylor*, 602 F. Supp. 3d 1172 (D.S.D. 2022); *Garcia v. Gutierrez*, 147 N.M. 105 (2009)).
- Other factors that may affect child custody jurisdiction in Tribal-state cases include:
 - whether the parties are enrolled Tribal members;
 - whether the state is a P.L. 280 state; and
 - statutory language and case law regarding certain terms (e.g., Indian country, pueblos, fee land).
 - Include specific parenting time (visitation) provisions. If parenting time is allowed, include whether parenting time or exchange is to be supervised, and the place, time, length of stay, and how holidays and birthdays will be handled.



Tribal Court Enforcement of State Custody Orders

- Tribal court enforcement of a state custody order will be determined based on the Tribal child custody jurisdictional law or whether the Tribal court has found that full faith and credit or comity requires such enforcement.



Civil Protection Orders

BENCH CARD 6

FIREARMS

CHECKLIST FOR USE ON THE BENCH



Issuance of Firearms Provisions

- Take steps to obtain information necessary to identify whether specific firearms relief is necessary.
- Determine whether any legal standard for inclusion of firearms relief is met.
- Incorporate tailored, specific firearms provisions in orders.
 - Require surrender of "all firearms" and use "including but not limited to" language if enumerating firearms.
- Set respondents up for successful compliance with firearms provisions by, for example, providing written or oral instructions on where and how to relinquish firearms. More information can be found [here](#).
- Facilitate entry of orders in state/Tribal registries and federal databases (numerical identifiers; brady indicator), including through use of a supplemental information sheet. More information can be found [here](#).
- Effectively address firearms provisions where respondent is a government employee who uses firearms in their work (law enforcement/military respondents).



Service of Process

- Ensure immediate and effective transmittal of service paperwork to serving law enforcement agency.
- Employ a supplemental information sheet to facilitate service, including information about firearms access and locations.
- Set expectation that serving officers inform the court (e.g., through return of service form) of firearms surrendered (or not surrendered) at service.
- Provide or use leadership to set expectation that serving law enforcement agency provides timely notification to protected party of the results of service.
- Grant continuances of hearings on final orders and extension of ex parte orders, including firearm provisions, as authorized by statute.



Monitoring Compliance

- Schedule a compliance review hearing to address whether the respondent has surrendered all firearms as ordered.
- Consider canceling the hearing if proof of surrender is submitted to the court (affidavit/declaration and receipt, ideally).
- If identity and number of firearms is not known at time of issuance, consider holding review hearing even if firearms are surrendered to determine whether all firearms have been surrendered.
- Coordinate with the law enforcement agency accepting firearms to ensure a receipt is provided.
- Where the respondent seeks to transfer firearms to a third party, follow the process for ensuring that the transfer is safe and legal.
 - Use a form/affidavit of third-party transfer.
 - Consider requiring both the third party and the respondent to appear at a hearing.
 - Require a background check to ensure eligibility.
 - Ensure third party and respondent understand their responsibilities and criminal liability for allowing firearms access to the respondent.



Enforcement

Jurisdiction-Specific Information



Return of Firearms Upon Expiration of the Order

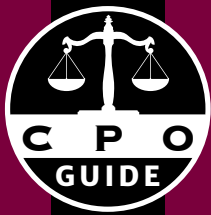
- Do not order the return of firearms unless a determination has been made that the respondent is no longer a prohibited person under state/Tribal or federal law.
 - Should be done through a criminal background check by law enforcement.
- Notify petitioner of request for return of firearms and the date of a hearing on the issue, if scheduled.



Checklist for Judicial Leadership

- Set respondents up for successful compliance with firearms provisions through such methods as informational materials/videos, meeting with court staff.
- Facilitate entry of orders in state/Tribal registries and federal databases (numerical identifies; brady indicator), including through use of a supplemental information sheet.
- Consider employing a court compliance officer/case manager to interview petitioners to obtain information about firearms access and locations for serving officers.
- Coordinate with the law enforcement agency accepting firearms to ensure a receipt is provided.
- Create informational materials for petitioners regarding avenues for enforcement of firearms provisions (contempt, report to law enforcement, etc.).
- Establish a hearing process for requests for return of firearms upon expiration of orders, including a background check for eligibility and notice to the petitioner.
- Establish a process to regulate the transfer of firearms by prohibited individuals to eligible third parties.
 - Use a form/affidavit of third-party transfer.
 - Consider requiring both the third party and the respondent to appear at a hearing.
 - Require a background check of third party to ensure eligibility.
 - Ensure third party and respondent understand their responsibilities and criminal liability for allowing firearms access to the respondent.

Many of the suggestions regarding firearms, as well as additional guidance, may be found in these two resources from NCJFCJ: [Firearms and Civil Protection Orders: Answers to Judges' Frequently Asked Questions](#) and [Strategies to Improve the Response to Firearms in Civil Protection Order \(CPO\) Cases: A Checklist for Judges](#).



Civil Protection Orders

BENCH CARD 7

APPLICABLE LAWS

VAWA Full Faith and Credit Provisions:

[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 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.

(c) Cross or counter petition.

A protection order issued by a State, tribal, or territorial court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if--

- (1)** no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or
- (2)** 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.

(d) Notification and registration.

- (1)** Notification. A State, Indian tribe, or territory according

full faith and credit to an order by a court of another State, Indian tribe, or territory shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State, tribal, or territorial jurisdiction unless requested to do so by the party protected under such order.

(2) No prior registration or filing as prerequisite for enforcement. Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State, tribal, or territorial jurisdiction.

(3) Limits on Internet publication of registration information. A State, Indian tribe, or territory shall not make available publicly on the Internet any information regarding the registration, filing of a petition for, or issuance of a protection order, restraining order, or injunction in either the issuing or enforcing State, tribal or territorial jurisdiction, if such publication would be likely to publicly reveal the identity or location of the party protected under such order. A State, Indian tribe, or territory may share court-generated and law enforcement-generated information contained in secure, governmental registries for protection order enforcement purposes. The prohibition under this paragraph applies to all protection orders for the protection of a person residing within a State, territorial, or Tribal jurisdiction, whether or not the protection order was issued by that State, territory, or Tribe.

(e) Tribal court jurisdiction.

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.

Definitions:

[18 U.S.C. § 2266:](#)

In this chapter:

- (1)** Bodily injury. The term “bodily injury” means any act, except one done in self-defense, that results in physical injury or sexual abuse.
- (2)** Course of conduct. The term “course of conduct” means a pattern of conduct composed of 2 or more acts, evidencing a continuity of purpose.
- (3)** Enter or leave Indian country. The term “enter or leave Indian country” includes leaving the jurisdiction of 1 tribal government and entering the jurisdiction of another tribal government.
- (4)** Indian country. The term “Indian country” has the meaning stated in section 1151 of this title.
- (5)** Protection order. The term “protection order” includes--
 - (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.
- (6)** Serious bodily injury. The term “serious bodily injury” has the meaning stated in section 2119(2).
- (7)** Spouse or intimate partner. The term “spouse or intimate partner” includes--
 - (A)** for purposes of--
 - (i)** sections other than 2261A--
 - (I)** a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; or
 - (II)** a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship; and
 - (ii)** section 2261A--
 - (I)** a spouse or former spouse of the target of the stalking,

a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; or

(II) a person who is or has been in a social relationship of a romantic or intimate nature with the target of the stalking, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

(B) 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.

(8) State. The term “State” includes a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States.

(9) Travel in interstate or foreign commerce. The term “travel in interstate or foreign commerce” does not include travel from 1 State to another by an individual who is a member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member.

(10) Dating partner. The term “dating partner” refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser. The existence of such a relationship is based on a consideration of--

(A) the length of the relationship; and

(B) the type of relationship; and

(C) the frequency of interaction between the persons involved in the relationship.

(11) Pet. The term “pet” means a domesticated animal, such as a dog, cat, bird, rodent, fish, turtle, or other animal that is kept for pleasure rather than for commercial purposes.

(12) Emotional support animal. The term “emotional support animal” means an animal that is covered by the exclusion specified in section 5.303 of title 24, Code of Federal Regulations (or a successor regulation), and that is not a service animal.

(13) Service animal. The term “service animal” has the meaning given the term in section 36.104 of title 28, Code of Federal Regulations (or a successor regulation).

Tribal Jurisdiction Over Covered Crimes:

[25 USCA § 1304](#)

(a) Definitions

In this section:

(1) Assault of Tribal justice personnel

The term “assault of Tribal justice personnel” means any

violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs that involves the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of, that Indian tribe or serving that Indian tribe during, or because of, the performance or duties of that individual in—

- (A) preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting a covered crime;
- (B) adjudicating, participating in the adjudication of, or supporting the adjudication of a covered crime;
- (C) detaining, providing supervision for, or providing services for persons charged with a covered crime; or
- (D) incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of a covered crime.

(2) Child

The term "child" means a person who has not attained the lesser of—

- (A) the age of 18; and
- (B) except in the case of sexual abuse, the age specified by the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs.

(3) Child violence

The term "child violence" means the use, threatened use, or attempted use of violence against a child proscribed by the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs.

(4) Coercion; commercial sex act

The terms "coercion" and "commercial sex act" have the meanings given the terms in section 1591(e) of title 18.

(5) Covered crime.

The term "covered crime" means—

- (A) assault of Tribal justice personnel;
- (B) child violence;
- (C) dating violence;
- (D) domestic violence;
- (E) obstruction of justice;
- (F) sexual violence;
- (G) sex trafficking;
- (H) stalking; and
- (I) a violation of a protection order.

(6) Dating violence. The term "dating violence" means any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs that is committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

(7) Domestic violence. The term "domestic violence" means any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs that is committed by—

- (A) a current or former spouse or intimate partner of the victim;
- (B) a person with whom the victim shares a child in common;
- (C) a person who is cohabitating with or who has cohabitated with the victim as a spouse or intimate partner; or
- (D) a person similarly situated to a spouse of the victim under the domestic- or family-violence laws of the Indian tribe that has jurisdiction over the Indian country where the violation occurs.

(8) Indian country. The term "Indian country" has the meaning given the term in section 1151 of Title 18.

(9) Obstruction of justice. The term "obstruction of justice" means any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs that involves interfering with the administration or due process of the laws of the Indian tribe, including any Tribal criminal proceeding or investigation of a crime.

(10) Participating tribe. The term "participating tribe" means an Indian tribe that elects to exercise special Tribal criminal jurisdiction over the Indian country of that Indian tribe.

(11) Protection order. The term "protection order"—

- (A) means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; and
- (B) includes any temporary or final order issued by a civil or criminal court, whether obtained by filing an independent action or as a pendent lite order in another proceeding, if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(12) Sex trafficking. The term "sex trafficking" means conduct within the meaning of section 1591(a) of Title 18.

(13) Sexual violence. The term "sexual violence" means any nonconsensual sexual act or contact proscribed by the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs, including in any case in which the victim lacks the capacity to consent to the act.

(14) Special Tribal criminal jurisdiction. The term "special Tribal criminal jurisdiction" means the criminal jurisdiction that a participating tribe may exercise under

this section but could not otherwise exercise.

(15) Spouse or intimate partner. The term “spouse or intimate partner” has the meaning given the term in section 2266 of Title 18.

(16) Stalking. The term “stalking” means engaging in a course of conduct directed at a specific person proscribed by the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs that would cause a reasonable person--

(A) to fear for the person's safety or the safety of others; or

(B) to suffer substantial emotional distress.

(17) Violation of a protection order.

The term “violation of a protection order” means an act that--

(A) occurs in the Indian country of a participating tribe; and

(B) violates a provision of a protection order that--

(i) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person;

(ii) was issued against the defendant;

(iii) is enforceable by the participating tribe; and

(iv) is consistent with section 2265(b) of Title 18.

(b) Nature of the criminal jurisdiction

(1) In general

Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by sections 1301 and 1303 of this title, the powers of self-government of a participating tribe, including any participating tribes in the State of Maine, include the inherent power of that tribe, which is hereby recognized and affirmed, to exercise special Tribal criminal jurisdiction over all persons.

(2) Concurrent jurisdiction

The exercise of special Tribal criminal jurisdiction by a participating tribe shall be concurrent with the jurisdiction of the United States, of a State, or of both.

(3) Applicability

Nothing in this section--

(A) creates or eliminates any Federal or State criminal jurisdiction over Indian country; or

(B) affects the authority of the United States or any State government that has been delegated authority by the United States to investigate and prosecute a criminal violation in Indian country.

(4) Exception if victim and defendant are both non-Indians

(A) In general

A participating tribe may not exercise special Tribal criminal jurisdiction over an alleged offense, other than

obstruction of justice or assault of Tribal justice personnel, if neither the defendant nor the alleged victim is an Indian.

(B) Definition of victim

In this paragraph and with respect to a criminal proceeding in which a participating tribe exercises special Tribal criminal jurisdiction based on a violation of a protection order, the term "victim" means a person specifically protected by a protection order that the defendant allegedly violated.

(c) Criminal conduct

A participating tribe may exercise special Tribal criminal jurisdiction over a defendant for a covered crime that occurs in the Indian country of the participating tribe.

(d) Rights of defendants

In a criminal proceeding in which a participating tribe exercises special Tribal criminal jurisdiction, the participating tribe shall provide to the defendant--

(1) all applicable rights under this Act;

(2) if a term of imprisonment of any length may be imposed, all rights described in section 1302(c) of this title;

(3) the right to a trial by an impartial jury that is drawn from sources that--

(A) reflect a fair cross section of the community; and

(B) do not systematically exclude any distinctive group in the community, including non-Indians; and

(4) all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise special Tribal criminal jurisdiction over the defendant.

(e) Petitions to stay detention

(1) In general

A person who has filed a petition for a writ of habeas corpus in a court of the United States under section 1303 of this title may petition that court to stay further detention of that person by the participating tribe.

(2) Grant of stay

A court shall grant a stay described in paragraph (1) if the court--

(A) finds that there is a substantial likelihood that the habeas corpus petition will be granted; and

(B) after giving each alleged victim in the matter an opportunity to be heard, finds by clear and convincing evidence that under conditions imposed by the court, the petitioner is not likely to flee or pose a danger to any person or the community if released.

(f) Petitions for writs of habeas corpus

(1) In general

After a defendant has been sentenced by a participating tribe, the defendant may file a petition for a writ of habeas corpus in a court of the United States under section 1303 of this title.

(2) Requirement

An application for a writ of habeas corpus on behalf of a person in custody pursuant to an order of a Tribal court shall not be granted unless –

(A) the applicant has exhausted the remedies available in the Tribal court system;

(B) there is an absence of an available Tribal corrective process; or

(C) circumstances exist that render the Tribal corrective process ineffective to protect the rights of the applicant.

(g) Notice; habeas corpus petitions

A participating tribe that has ordered the detention of any person has a duty to timely notify in writing such person of their rights and privileges under this section and under section 1303 of this title.

(h) Reimbursement and grants to Tribal governments

(1) Reimbursement

(A) In general

The Attorney General may reimburse Tribal government authorities (or an authorized designee of a Tribal government) for expenses incurred in exercising special Tribal criminal jurisdiction.

(B) Eligible expenses

Eligible expenses for reimbursement under subparagraph (A) shall include expenses and costs incurred in, relating to, or associated with–

(i) investigating, making arrests relating to, making apprehensions for, or prosecuting covered crimes (including costs involving the purchasing, collecting, and processing of sexual assault forensic materials);

(ii) detaining, providing supervision of, or providing services for persons charged with covered crimes (including costs associated with providing health care);

(iii) providing indigent defense services for 1 or more persons charged with 1 or more covered crimes; and

(iv) incarcerating, supervising, or providing treatment, rehabilitation, or reentry services for 1 or more persons charged with 1 or more covered crimes.

(C) Procedure

(i) In general

Reimbursements authorized under subparagraph (A) shall be in accordance with rules promulgated by the Attorney General, after consultation with Indian tribes, and within 1 year after March 15, 2022.

(ii) Maximum reimbursement

The rules promulgated by the Attorney General under clause (i)–

(I) shall set a maximum allowable reimbursement to any Tribal government (or an authorized designee of any Tribal government) in a 1–year period; and

(II) may allow the Attorney General–

(aa) to establish conditions under which a Tribal

government (or an authorized designee of a Tribal government) may seek a waiver to the maximum allowable reimbursement requirement established under subclause (I); and

(bb) to waive the maximum allowable reimbursement requirements established under subclause (I) for a Tribal government (or an authorized designee of a Tribal government) if the conditions established by the Attorney General under item (aa) are met by that Tribal government (or authorized designee).

(iii) Timeliness of reimbursements

To the maximum extent practicable, the Attorney General shall–

(I) not later than 90 days after the date on which the Attorney General receives a qualifying reimbursement request from a Tribal government (or an authorized designee of a Tribal government)–

(aa) reimburse the Tribal government (or authorized designee); or

(bb) notify the Tribal government (or authorized designee) of the reason by which the Attorney General was unable to issue the reimbursement; and

(II) not later than 30 days after the date on which a Tribal government (or an authorized designee of a Tribal government) reaches the annual maximum allowable reimbursement for the Tribal government (or an authorized designee) established by the Attorney General under clause (ii)(I), notify the Tribal government (or authorized designee) that the Tribal government has reached its annual maximum allowable reimbursement.

(D) Eligibility for participating tribes in Alaska

A Tribal government (or an authorized designee of a Tribal Government) of an Indian tribe designated as a participating Tribe under subtitle B of title VIII of the Violence Against Women Act Reauthorization Act of 2022 shall be eligible for reimbursement, in accordance with this paragraph, of expenses incurred in exercising special Tribal criminal jurisdiction under that subtitle.

(2) Grants

The Attorney General may award grants to Tribal governments (or authorized designees of Tribal governments), including a Tribal government (or an authorized designee of a Tribal government) of an Indian tribe designated as a participating Tribe under subtitle B of title VIII of the Violence Against Women Act Reauthorization Act of 2022–

(A) to strengthen Tribal criminal justice systems to assist Indian tribes in exercising special Tribal criminal jurisdiction, including for–

(i) law enforcement (including the capacity of law enforcement, court personnel, or other non–law enforcement entities that have no Federal or State arrest

authority agencies but have been designated by an Indian tribe as responsible for maintaining public safety within the territorial jurisdiction of the Indian tribe, to enter information into and obtain information from national crime information databases);

(ii) prosecution;

(iii) trial and appellate courts (including facilities maintenance, renovation, and rehabilitation);

(iv) supervision systems;

(v) detention and corrections (including facilities maintenance, renovation, and rehabilitation);

(vi) treatment, rehabilitation, and reentry programs and services;

(vii) culturally appropriate services and assistance for victims and their families; and

(viii) criminal codes and rules of criminal procedure, appellate procedure, and evidence;

(B) to provide indigent criminal defendants with licensed defense counsel, at no cost to the defendant, in criminal proceedings in which a participating tribe prosecutes covered crimes;

(C) to ensure that, in criminal proceedings in which a participating tribe exercises special Tribal criminal jurisdiction, jurors are summoned, selected, and instructed in a manner consistent with all applicable requirements; and

(D) to accord victims of covered crimes rights that are similar to the rights of a crime victim described in section 3771(a) of title 18 consistent with Tribal law and custom.

(i) Supplement, not supplant

Amounts made available under this section shall supplement and not supplant any other Federal, State, or local government amounts made available to carry out activities described in this section.

(j) Authorization of appropriations

(1) In general

There is authorized to be appropriated \$25,000,000 for each of fiscal years 2023 through 2027—

(A) to carry out subsection (h); and

(B) to provide training, technical assistance, data collection, and evaluation of the criminal justice systems of participating tribes.

(2) Limitations

Of the total amount made available under paragraph (1) for each fiscal year, not more than 40 percent shall be used for reimbursements under subsection (h)(1).

knowing or having reasonable cause to believe that such person, including as a juvenile . . .

(8) is subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child, except that this paragraph shall only apply to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate; and

(B)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; . . .

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925.

18 U.S.C. § 922(g)(8):

(g) It shall be unlawful for any person— . . .

(8) who is subject to a court order that—

(A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;

(B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(C)(i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; . . .

to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

Gun Control Act (Protection Orders):

18 U.S.C. § 922(d)(8):

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person

Gun Control Act (Misdemeanor Crimes of Domestic Violence):

[18 U.S.C. § 922\(d\)\(9\):](#)

(d) It shall be unlawful for any person to sell or otherwise dispose of any firearm or ammunition to any person knowing or having reasonable cause to believe that such person, including as a juvenile-- . . .

(9) has been convicted in any court of a misdemeanor crime of domestic violence; . . .

This subsection shall not apply with respect to the sale or disposition of a firearm or ammunition to a licensed importer, licensed manufacturer, licensed dealer, or licensed collector who pursuant to subsection (b) of section 925 is not precluded from dealing in firearms or ammunition, or to a person who has been granted relief from disabilities pursuant to subsection (c) of section 925.

[18 U.S.C. § 922\(g\)\(9\):](#)

(g) It shall be unlawful for any person— . . .

(9) who has been convicted in any court of a misdemeanor crime of domestic violence, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

[18 U.S.C. § 921:](#)

(a) As used in this chapter. . .

(33)(A) Except as provided in subparagraphs (B) and (C), the term “misdemeanor crime of domestic violence” means an offense that--

(i) is a misdemeanor under Federal, State, Tribal, or local law; and

(ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, by a person similarly situated to a spouse, parent, or guardian of the victim, or by a person who has a current or recent former dating relationship with the victim.

(B)(i) A person shall not be considered to have been convicted of such an offense for purposes of this chapter, unless--

(I) the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and

(II) in the case of a prosecution for an offense described

in this paragraph for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either **(aa)** the case was tried by a jury, or **(bb)** the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

(ii) A person shall not be considered to have been convicted of such an offense for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) unless the pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(C) A person shall not be considered to have been convicted of a misdemeanor crime of domestic violence against an individual in a dating relationship for purposes of this chapter if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had firearm rights restored unless the expungement, pardon, or restoration of rights expressly provides that the person may not ship, transport, possess, or receive firearms: Provided, That, in the case of a person who has not more than 1 conviction of a misdemeanor crime of domestic violence against an individual in a dating relationship, and is not otherwise prohibited under this chapter, the person shall not be disqualified from shipping, transport, possession, receipt, or purchase of a firearm under this chapter if 5 years have elapsed from the later of the judgment of conviction or the completion of the person's custodial or supervisory sentence, if any, and the person has not subsequently been convicted of another such offense, a misdemeanor under Federal, State, Tribal, or local law which has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, or any other offense that would disqualify the person under section 922(g). The national instant criminal background check system established under section 103 of the Brady Handgun Violence Prevention Act (34 U.S.C. 40901) shall be updated to reflect the status of the person. Restoration under this subparagraph is not available for a current or former spouse, parent, or guardian of the victim, a person with whom the victim shares a child in common, a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or a person similarly situated to a spouse, parent, or guardian of the victim. . .

(37)(A) The term “dating relationship” means a relationship between individuals who have or have recently had a continuing serious relationship of a romantic or intimate nature.

(B) Whether a relationship constitutes a dating relationship under subparagraph (A) shall be determined based on consideration of--

(i) the length of the relationship;

(ii) the nature of the relationship; and

(iii) the frequency and type of interaction between the individuals involved in the relationship.

(C) A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a dating relationship under subparagraph (A).

[18 U.S.C. § 924\(a\)\(2\)](#):

(2) Whoever knowingly violates subsection (a)(6), (h), (i), (j), or (o) of section 922 shall be fined as provided in this title, imprisoned not more than 10 years, or both.

Space for Local Jurisdiction's laws:

CPO Issuance Statutes

CPO Enforcement Statutes

Full Faith and Credit of CPOs

Other



Civil Protection Orders

BENCH CARD 8

ADDITIONAL ASSISTANCE AND INFORMATION

For additional assistance on improving or evaluating your civil protection order system, see the National Council of Juvenile and Family Court Judges' [Civil Protection Order Guide Project](#) for [Civil Protection Orders: A Guide for Improving Practice](#) and companion resources. The project is also available to provide training and technical assistance to judicial officers as well as to advocates, attorneys, courts, law enforcement, and prosecutors.

The Battered Women's Justice Project's [National Center on Protection Orders and Full Faith and Credit](#) is also available to provide training and technical assistance and has resources on Full Faith and Credit for non-judicial stakeholders as well as matrices of state and territorial statutes related to the issuance and enforcement of civil protection orders.

Assistance for Judges

[National Council of Juvenile and Family Court Judges](#)

[National Center for State Courts](#)

Assistance for Law Enforcement

[Law Enforcement Training and Technical](#)

[Assistance Consortium](#)

Assistance on Full Faith and Credit

Battered Women's Justice Project's
[National Center on Protection Orders and Full Faith and Credit](#)

Assistance with Implementation of the SAFeR Model

Battered Women's Justice Project's
[National Center on Children and Domestic Violence](#)

Assistance on Tribal Court Orders

[National American Indian Court Judges Association](#)

[National Congress of American Indians](#)

[National Indigenous Women's Resource Center](#)

[Red Wing Consulting, Inc.](#)

[Southwest Center for Law and Policy](#)

The Tribal Law and Policy Institute's
[Tribal Protection Order Resources](#)

[Tribal Judicial Institute](#)

Assistance on Interstate Custody Matters

[The Legal Resource Center on Violence Against Women](#)

Assistance on Immigration Matters

[ASISTA](#)

[Tahirih Justice Center](#)

Assistance with Accessibility for People with Disabilities

Activating Change's
[End Abuse of People with Disabilities](#)

Assistance for Victims of Domestic Violence

[National Domestic Violence Hotline](#)
Call (800) 799-SAFE (7233), TTY (800) 787-3224, text
"start" to 88788, or access chat services via the website.

Assistance with Language Access

Language Access for Individuals with Limited
English Proficiency: Asian Pacific Institute on
Gender-Based Violence's
[Interpretation Technical Assistance and Resource
Center](#)

Language Access for Individuals that are Deaf or
Hard of Hearing:
Activating Change's
[End Abuse of People with Disabilities](#)



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