

1999 HOUSE JUDICIARY

HB 1077

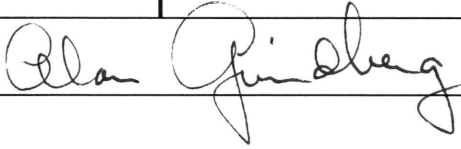
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1077

House Judiciary Committee

Conference Committee

Hearing Date January 12, 1999

Tape Number	Side A	Side B	Meter #
2	X		2.7
Committee Clerk Signature 			

Minutes:

JUSTICE ERICKSTAD: I am now a surrogate judge and sometimes sit on the panel of emergency appeals. This bill will help reduce domestic violence. I sit on a national committee on domestic violence. That committee has come up with a number of recommendations. The court staff has developed this bill which adopts those recommendations. I think it is an excellent bill and I urge its passage.

JAMES GANJE: (Court staff) Has prepared testimony, which is attached, and he also presents the committee with a letter from JUDGE JOEL MEDD, of Grand Forks, which is attached.

Federal law requires states to enforce such orders, but the officers are never sure and this will remove what doubts they have.

ROSELLEN SAND (AG) Presents prepared testimony which is attached.

Page 2

House Judiciary Committee

Bill/Resolution Number 1077

Hearing Date January 12, 1999

BONNIE PALACEK (NDCAS) Gave the committee several handouts which are attached. This legislation is needed to convince local law enforcement officers to enforce such orders. There are 6000 cases of domestic violence every year.

COMMITTEE ACTION: January 13, 1999

REP, KLEMIN moved that the committee recommend that the bill DO PASS. Rep. Delmore seconded and the motion carried on a roll call vote of 13 ayes, 0 nays and 2 absent. Rep. Sveen was assigned to carry the bill on the floor.

Date:
Roll Call Vote #:

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1077

House JUDICIARY Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Klemin Seconded By Delmore

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. SVEEN	✓	
REP. CLEARY	✓				
REP. DELMORE	✓				
REP. DISRUD	✓				
REP. FAIRFIELD	✓				
REP. GORDER	✓				
REP. GUNTER					
REP. HAWKEN	✓				
REP. KELSH	.				
REP. KLEMIN	✓				
REP. KOPPELMAN	✓				
REP. MAHONEY	✓				
REP. MARAGOS	✓				
REP. MEYER	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Sveen

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 14, 1999 9:18 a.m.

Module No: HR-08-0593
Carrier: Sveen
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1077: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1077 was placed on the
Eleventh order on the calendar.

1999 SENATE JUDICIARY

HB 1077

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1077

Senate Judiciary Committee

Conference Committee

Hearing Date March 1, 1999

Tape Number	Side A	Side B	Meter #
1		x	552 - 3825
Committee Clerk Signature <i>Jackie Follman</i>			

Minutes:

HB1077 relates to recognition and enforcement of foreign domestic violence protection orders and relates to violations of protection orders; and to provide a penalty.

SENATOR STENEHJEM opened the hearing on HB1077 at 11:15 A.M.

All were present except Senator C. Nelson.

JIM GANJE, Supreme Court, testified to explain HB1077. Testimony attached. He also proposed some amendments. These amendments clarify the dual orders.

SENATOR TRAYNOR asked that extradition is available only if there is a felony.

JIM GANJE stated that is correct.

SENATOR TRAYNOR asked if there was a violation of the order under the penalty provision, then the person would be punished in North Dakota and not sent to the other state.

Page 2

Senate Judiciary Committee

Bill/Resolution Number HB1077

Date: March 1, 1999

JIM GANJE stated that is correct. Ten states other than North Dakota do not have this law.

SENATOR STENEHJEM asked if they are moving in this direction.

JIM GANJE stated yes.

RALPH ERICKSTAD testified in support of HB1077. Eleven states have not adopted this statute. We need to have a mechanism of recognizing our sister states or tribal orders.

ROSELLEN SAND, Attorney General's Office, testified in support of HB1077. Testimony attached.

BONNIE POLACEK, North Dakota Council of Abused Women, testified in support of HB1077.

Testimony attached.

SENATOR STENEHJEM CLOSED the hearing on HB1077.

SENATOR TRAYNOR made a motion on Amendments, SENATOR LYSON seconded.

Motion carried. 4 - 0 - 2

SENATOR TRAYNOR made a motion for DO PASS AS AMENDED, SENATOR LYSON

seconded. Motion carried. 4 - 0 - 2

SENATOR TRAYNOR will carry the bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1077

Page 2, line 4, replace “ is a dual protection order “ with “ also provides protection for the respondent “

Page 2, line 6, replace “ each party “ with “ the respondent “

Renumber accordingly

Date: 3-1-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1077

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion on Amendment

Motion Made By Senator Traynor Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier					
Senator Carolynn Nelson					

Total (Yes) 4 No 0

Absent 0

Floor Assignment _____

Date: 3-1-99
Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1077

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass AS Amended

Motion Made By Traynor Seconded By Lyson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier					
Senator Carolynn Nelson					

Total (Yes) 4 No 0

Absent 2

Floor Assignment Senator Traynor

REPORT OF STANDING COMMITTEE

HB 1077: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (4 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1077 was placed on the Sixth order on the calendar.

Page 2, line 4, replace "is a dual protection order" with "also provides protection for the respondent"

Page 2, line 6, replace "each party" with "the respondent"

Renumber accordingly

1999 TESTIMONY

HB 1077

Summary of House Bill No. 1077

House Bill No. 1077 provides for the full faith and credit recognition and enforcement of foreign domestic violence protection orders. It is intended to establish the statutory framework for implementing the full faith and credit requirement of the federal Violence Against Women Act, which was adopted in 1994 and codified as 18 USC 2265. A copy of the federal law is attached. The bill is based on the review of statutes adopted in approximately 20 other states. Laws implementing the federal full faith and credit requirement have now been enacted in about 40 states.

Section 1 of the bill would create a new section to NDCC Chapter 14-07.1 to govern full faith and credit recognition and enforcement of foreign protection orders. The *introductory paragraph* and *subsection 1* essentially restate the requirements set out under 18 USC 2265. *Subsection 2* would allow the protected person to file the foreign protection order with the clerk of district court. Filing the order would not, however, be a prerequisite to recognition and enforcement. A filing fee could not be assessed for filing the foreign order with the clerk of district court. *Subsection 3* describes the manner in which law enforcement may rely upon the foreign protection order. A law enforcement officer may rely upon any foreign protection order provided to the officer, may make an arrest for violation of the order in the same manner as for violation of an order issued by a North Dakota court, and may rely upon the statement of the protected person that the order is still in effect and that the respondent was personally served with a copy of the order. A law enforcement officer acting in good faith and without malice in enforcing the foreign order would be immune from civil and criminal liability for any action arising in connection with enforcement of the order. *Subsection 4* would establish a criminal penalty for intentionally providing a foreign protection order known to be false or invalid or for denying that service of the order was made when in fact service had been accomplished.

Section 2 of the bill would amend NDCC Section 14-07.1-06 to clarify the criminal penalty for violation of a foreign domestic violence protection order.

[(C) and (D) Repealed. Pub.L. 104-132, Title II, § 205(d)(2)(C), Apr. 24, 1996, 110 Stat. 1232]

[(5) to (10) Repealed. Pub.L. 104-132, Title II, § 205(d)(2)(D), Apr. 24, 1996, 110 Stat. 1232]

(c) **Victim defined.**—For purposes of this section, the term “victim” means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim’s estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

[(d) to (g) Repealed. Pub.L. 104-132, Title II, § 205(d)(3), Apr. 24, 1996, 110 Stat. 1232]

(Added Pub.L. 103-322, Title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1928, and amended Pub.L. 104-132, Title II, § 205(d), Apr. 24, 1996, 110 Stat. 1231.)

HISTORICAL AND STATUTORY NOTES

1996 Amendments

Subsec. (a). Pub.L. 104-132, § 205(d)(1), inserted “or 3663A” after “3663”.

Subsec. (b)(1). Pub.L. 104-132, § 205(d)(2)(A), subsumed former subpar. (A) into par. (1), substituted reference to par. (2) for reference to par. (3), and struck out former subpar. (B), which read as follows: “the United States Attorney enforce the restitution order by all available and reasonable means.”

Subsec. (b)(2). Pub.L. 104-132, § 205(d)(2)(B), in the heading struck out “by victim” following “enforcement”, and in text substituted “under this section shall be issued and enforced in accordance with section 3664 in the same manner as an order under section 3663A” for “also may be enforced by a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.”

Subsec. (b)(4)(C). Pub.L. 104-132, § 205(d)(2)(C), struck out subpar. (C), which had provided that notwithstanding subpar. (A), the court could take into account the economic circumstances of the defendant in determining the manner in which and the schedule according to which the restitution was to be paid.

Subsec. (b)(4)(D). Pub.L. 104-132, § 205(d)(2)(C), struck out former subpar. (D), which had provided that subpar. (A) did not apply if (i) the court found on the record that the economic circumstances of the defendant did not allow for the payment of any amount of a restitution order, and did not allow for the payment of any or some portion of the amount of a restitution order in the foreseeable future (under any reasonable schedule of payments); and

(ii) the court entered in its order the amount of the victim’s losses, and provided a nominal restitution award.

Subsec. (b)(5) to (10). Pub.L. 104-132, § 205(d)(2)(D), struck out former pars. (5) through (10), relating, respectively, to “More than 1 offender”, “More than 1 victim”, “Payment schedule”, “Setoff”, “Effect on other sources of compensation”, and “Condition of probation or supervised release”.

Subsec. (c). Pub.L. 104-132, § 205(d)(3), (4), added subsec. (c), and struck out former subsec. (c), relating to the preparation and filing of affidavits with the court listing the amounts subject to restitution under this section.

Subsecs. (d) to (g). Pub.L. 104-132, § 205(d)(3), struck out subsecs. (d) through (g), relating, respectively, to “Objection”, “Additional documentation and testimony”, “Final determination of losses”, and “Restitution in addition to punishment”.

Effective Date of 1996 Amendments

Amendment by Pub.L. 104-132 to be effective, to the extent constitutionally permissible, for sentencing proceedings in cases in which the defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub.L. 104-132, set out as a note under section 2248 of this title.

Legislative History

For legislative history and purpose of Pub.L. 103-322, see 1994 U.S. Code Cong. and Adm. News, p. 1801. See, also, Pub.L. 104-132, 1996 U.S. Code Cong. and Adm. News, p. 924.

LIBRARY REFERENCES

Criminal Law ¶1220.
C.J.S. Criminal Law §§ 1759 to 1786.
WESTLAW Topic No. 110.

§ 2265. Full faith and credit given to protection orders

(a) **Full faith and credit.**—Any protection order issued that is consistent with subsection (b) of this section by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the court of another State or Indian tribe (the enforcing State or Indian tribe) and enforced as if it were the order of the enforcing State or tribe.

(b) **Protection order.**—A protection order issued by a State or tribal court is consistent with this subsection if—

(1) such court has jurisdiction over the parties and matter under the law of such State or Indian tribe; 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 or tribal 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 or tribal 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.

(Added Pub.L. 103-322, Title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1930.)

HISTORICAL AND STATUTORY NOTES

Legislative History

For legislative history and purpose of Pub.L. 103-322, see 1994 U.S. Code Cong. and Adm. News, p. 1801.

LIBRARY REFERENCES

Breach of the Peace ☞15.1.

Judgment ☞815, 817.

C.J.S. Breach of the Peace § 17.1 et seq.

C.J.S. Judgments §§ 448, 889, 891.

WESTLAW Topic Nos. 62, 228.

LAW REVIEW AND JOURNAL COMMENTARIES

Symposium: Domestic violence and the law.
16 Pace L.Rev. 1 (1995).

§ 2266. Definitions

In this chapter—

“bodily injury” means any act, except one done in self-defense, that results in physical injury or sexual abuse.

“Indian country” has the meaning stated in section 1151.

“protection order” includes any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil and criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection.

“spouse or intimate partner” includes—

(A) a spouse, a former spouse, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited with the abuser as a spouse; and

(B) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State in which the injury occurred or where the victim resides.

“State” includes a State of the United States, the District of Columbia, a commonwealth, territory, or possession of the United States.

“travel across State lines” does not include travel across State lines by an individual who is a member of an Indian tribe when such individual remains at all times in the territory of the Indian tribe of which the individual is a member.

(Added Pub.L. 103-322, Title IV, § 40221(a), Sept. 13, 1994, 108 Stat. 1931.)

State of North Dakota

GRAND FORKS, NELSON
AND GRIGGS COUNTIES

NORTHEAST CENTRAL JUDICIAL DISTRICT

P.O. BOX 6347

GRAND FORKS, NORTH DAKOTA 58206-6347

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DAN BELCHER
OFFICE MANAGER

CHAMBERS OF:

BRUCE E. BOHLMAN
DISTRICT JUDGE

LAWRENCE E. JAHNKE
PRESIDING JUDGE

DEBBIE G. KLEVEN
DISTRICT JUDGE

January 11, 1999

RECEIVED
JAN 12 1999
COURT ADMIN. OFFICE
SUPREME COURT

JOEL D. MEDD
DISTRICT JUDGE

KIRK SMITH
DISTRICT JUDGE

Representative Duane DeKrey
Chairman, House Judiciary Committee
State Capitol
Bismarck ND 58505

Re: House Bill 1077, Legislation on Full Faith and Credit Recognition and Enforcement of Foreign Domestic Violence Protection Orders

Dear Representative Dekrey:

I am writing this letter in support of House Bill 1077. I am a member of the Committee on Tribal and State Court Affairs, which was instrumental in developing this legislation over the past year.

I am chambered in the City of Grand Forks, which is, as you know, a border city with Minnesota. This legislation would help to clarify the enforcement of foreign domestic violence protection orders issued in Minnesota and in Tribal Court. As it currently stands, there is a considerable amount of confusion as to what is the obligation of a law enforcement officer when presented with a foreign domestic violence protection order. The Federal Law provides that it is fully enforceable in North Dakota, but there is no mechanism or North Dakota Law covering this subject. This legislation would clarify that a law enforcement officer may enforce such a foreign domestic violence protection order.

I believe this is important for North Dakota. It affects many students at the University of North Dakota who are residents of Minnesota or perhaps from a reservation. They may get a protection order when they are at home in Minnesota or from a reservation and then come over to Grand Forks where they attend school. This legislation would afford immediate protection for them in Grand Forks under a domestic violence protection order issued either in Minnesota or by a Tribal Court if it was properly issued.

Therefore, I support House Bill 1077 and would urge its enactment. If there are any questions that you may have for me, please feel free to contact me at the above address and telephone number or by e-mail at joelm@necjd.court.state.nd.us.

Sincerely,



Joel D. Medd
District Judge

JDM/kn

cc: Mr. Jim Ganje, Staff Attorney, ND Supreme Court

TESTIMONY BEFORE THE
HOUSE JUDICIARY COMMITTEE
ON HOUSE BILL NO. 1077
January 12, 1999

My name is Rosellen M. Sand and I am General Counsel for the Attorney General. Since July of this past year I have also helped coordinate the efforts of the Office of Attorney General on the issue of the full faith and credit of domestic violence protection orders.

The Office of Attorney General supports the passage of House Bill 1077. In 1995 the Attorney General issued an opinion which essentially determined that foreign domestic violence orders must be enforced in North Dakota. I have attached a copy of the opinion for you.

This bill tracks the federal law and is consistent with that opinion. The bill does not require that foreign domestic violence orders be filed before they can be enforced. The bill merely provides a procedure for filing should a person choose to do so.

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 95-10

Date Issued: October 23, 1995

Requested by: Mr. Mark Boening
Cass County Assistant State's Attorney

- QUESTIONS PRESENTED -

I.

Whether Congress has authority to require a North Dakota court to give full faith and credit to a foreign state or tribal protection order pursuant to 18 U.S.C. § 2265.

II.

Whether North Dakota statutory provisions pertaining to enforcement of protection orders are pre-empted by provisions of 18 U.S.C. § 2265 inconsistent with state law.

- ATTORNEY GENERAL'S OPINIONS -

I.

It is my opinion that Congress has authority to require a North Dakota court to give full faith and credit to a foreign state or tribal protection order pursuant to 18 U.S.C. § 2265.

II.

It is further my opinion that North Dakota statutory provisions pertaining to enforcement of protection orders are pre-empted by provisions of 18 U.S.C. § 2265 to the extent that they are inconsistent with federal law.

- ANALYSES -

I.

Article 4, Section 1 of the United States Constitution provides:

Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

The full faith and credit clause requires that other states give a judicial decree the force and effect to which it was entitled in the state where rendered. If a judgment is an enforceable judgment in the state where rendered, the full faith and credit clause imposes a duty to give effect to that judgment even though the modes of procedure to enforce the judgment may not be the same in both states. Sistare v. Sistare, 218 U.S. 1 (1910).

18 U.S.C. § 2265 specifically sets forth the requirement that states and Indian tribes grant full faith and credit to a protection order issued by another state or Indian tribe. 18 U.S.C. § 2265 provides:

Sec. 2265. Full faith and credit given to protection orders

(a) Full faith and credit.--Any protection order issued that is consistent with subsection (b) of this section by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the court of another State or Indian tribe (the enforcing State or Indian tribe) and enforced as if it were the order of the enforcing State or tribe.

(b) Protection order.--A protection order issued by a State or tribal court is consistent with this subsection if--

(1) such court has jurisdiction over the parties and matter under the law of such State or Indian tribe; 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 or tribal 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 or tribal 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.

The term "protection order" is defined in 18 U.S.C. § 2266 as:

"protection order" includes any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final orders issued by civil and criminal courts (other than support or child custody orders) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection.

18 U.S.C. § 2265(a) requires that the state or Indian tribe enforce the protection order of another state or Indian tribe issued consistent with 18 U.S.C. § 2265(b) as if it were the order of the enforcing state or tribe.

Article 4, Section 1 of the United States Constitution authorizes Congress to adopt laws to implement the full faith and credit clause. 18 U.S.C. § 2265 is an act implementing the full faith and credit clause establishing the manner in which the judicial proceedings shall be proved and the effect of such proof. This implementing statute is consistent with the full faith and credit clause of the United State Constitution (Art. 4, § 1) and, it is my opinion, that Congress acted within its authority granted by that constitutional provision in enacting 18 U.S.C. § 2265.

II.

A review of 18 U.S.C. § 2265 and North Dakota statutory provisions concerning the enforcement of foreign judgments, criminal penalties for violating protection orders, and the warrantless arrest of violators of protection orders discloses conflicts in enforcement of out-of-state or tribal protection orders by North Dakota courts.

N.D.C.C. ch. 28-20.1 sets forth procedures for the enforcement and filing of foreign judgments, decrees, or orders of courts which are entitled to full faith and credit in this state. This chapter requires that an authenticated copy of a foreign judgment be filed with the clerk of the court with a filing fee.

N.D.C.C. § 14-07.1-06 provides:

Whenever a protection order is granted pursuant to section 14-07.1-02 or 14-07.1-03 and the respondent or person to be restrained has been served a copy of the order, a violation of the order is a class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of a protection order is a class C felony subject to the penalties therefor.

On its face, N.D.C.C. § 14-07.1-06 limits initiation of a criminal action to only those protection or temporary protection orders issued pursuant to N.D.C.C. §§ 14-06.1-02 or 14-06.1-03. In addition, N.D.C.C. § 14-07.1-11(1) authorizes a warrantless arrest of a person who has committed the offense of violating a protection order under N.D.C.C. § 14-07.1-06.

18 U.S.C. § 2265(a) requires that an enforcing state enforce the protection order issued by another state or Indian tribe "as if it were the order of the enforcing state." In other words, the state or tribal protection order sought to be enforced in North Dakota would be treated as though that order had been issued by a North Dakota court. The criminal penalty and warrantless arrest provisions of North Dakota law appear to be inconsistent with 18 U.S.C. § 2265(a) in limiting enforcement of a protection order only to those protection orders issued by North Dakota courts pursuant to N.D.C.C. §§ 14-07.1-02 and 14-07.1-03. This conflict presents the question of whether 18 U.S.C. § 2265 pre-empts these North Dakota statutory provisions which are inconsistent with 18 U.S.C. § 2265.

The North Dakota Supreme Court in State v. Liberty National Bank and Trust Co., 427 N.W.2d 307, 309-10 (N.D.), cert. denied, 488 U.S. 956 (1988), set forth the well established standards for deciding a pre-emption question. The court recognized that federal pre-emption of state law can occur in one of three ways.

Congress may explicitly define the extent to which it intends to pre-empt state law by specifically declaring in a federal statute that it intends to pre-empt state law in a particular field. Even if no express pre-emptive language exists, Congress may indicate an intent to occupy an entire field by regulation and impliedly pre-empt state law.

Finally, state law may be pre-empted to the extent that it actually conflicts with federal law. Conflict pre-emption occurs where compliance with both federal and state laws is a physical impossibility or where state law stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress.

Although it may be concluded that, in adopting 18 U.S.C. § 2265, Congress intended to pre-empt state law in its implementation of the full faith and credit clause of the United States constitution (Article 4, § 1), such pre-emption also may be found by applying the third pre-emption standard, that is, conflict pre-emption.

The United States Supreme Court has expressed its reluctance to recognize federal pre-emption of state domestic relations laws. Mansell v. Mansell, 490 U.S. 581 (1989). However, it is apparent that Congress has intended to enter the domestic relations area to assist in the enforcement of protection orders throughout the United States. This intent is disclosed not only by 18 U.S.C. § 2265 but, also, by other statutory provisions adopted by Congress at the time of the passage of section 2265.

18 U.S.C. § 2261 imposes federal criminal penalties upon a person who travels across a state line or enters or leaves Indian country with the intent to injure, harass, or intimidate that person's spouse or intimate partner and causes bodily injury to that person while intentionally committing a crime of violence. 18 U.S.C. § 2262 creates a federal criminal offense applicable to a person who travels across a state line or enters or leaves Indian country with the intent to violate a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the persons who are protected by the order. This provision also establishes a criminal penalty for causing a spouse or intimate partner to cross a state line or enter or leave Indian country by force, coercion, duress, or fraud when in the course or as a result of that conduct, the offender intentionally committed an act that injured that person's spouse or intimate partner in violation of a valid protection order issued by a state.

It is apparent from these federal statutory provisions that Congress intends that a protection order issued by a state or Indian tribe be readily enforceable outside the territorial jurisdiction of the issuing court and that substantial protections be provided to those persons who are intended to be protected by the order. The penalty provisions of 18 U.S.C. §§ 2261 and 2262 also evidence a strong congressional desire to not only punish a person who violates a protection order but also to establish a substantial deterrent for such conduct. Enforceability of the federal statutory provisions will make it less likely that a violator of a protection order would feel that he or she was in some safe harbor when engaging in conduct beyond the territorial jurisdiction of the court which originally issued the protection order.

The Congressional intent and goals of 18 U.S.C. § 2265 are not inconsistent with the same intent and goals of the Parental Kidnapping Prevention Act found in 28 U.S.C. § 1738a. The North Dakota Supreme Court recognized in Dahlen v. Dahlen, 393 N.W.2d 765 (N.D. 1986), that, in cases of interstate custody disputes, the Parental Kidnapping and Prevention Act would govern if state law, specifically the Uniform Child Custody Jurisdiction Act of N.D.C.C. ch. 14-14, conflicts with the federal law.

Application of the supremacy clause of the United States Constitution (Article 6, clause 2) and the standards of pre-emption previously discussed, lead me to conclude that 18 U.S.C. § 2265 pertaining to the enforceability of protection orders issued by another state or by an Indian tribe pre-empts those provisions of North Dakota state law which are inconsistent with the federal law.

18 U.S.C. § 2265 mandates that any valid court protection order issued by another state or by an Indian tribe be treated as though it had initially been issued by a North Dakota court pursuant to N.D.C.C. § 14-07.1-02 or 14-07.1-03. Protection orders, as defined in 18 U.S.C. § 2266, therefore may be enforced in North Dakota as any North Dakota court-issued protection order subjecting violators of those orders to the criminal penalties set forth in N.D.C.C. § 14-07.1-06 or to a warrantless arrest as authorized in N.D.C.C. § 14-07.1-11. Such non-North Dakota court-issued protection orders must, however, be consistent with the requirements and exceptions of 18 U.S.C. § 2265(b) and (c). In addition, any criminal proceeding brought pursuant to N.D.C.C. § 14-07.1-06 will also require that the respondent or person to be restrained must have been served a copy of the order to be enforced.

- EFFECT -

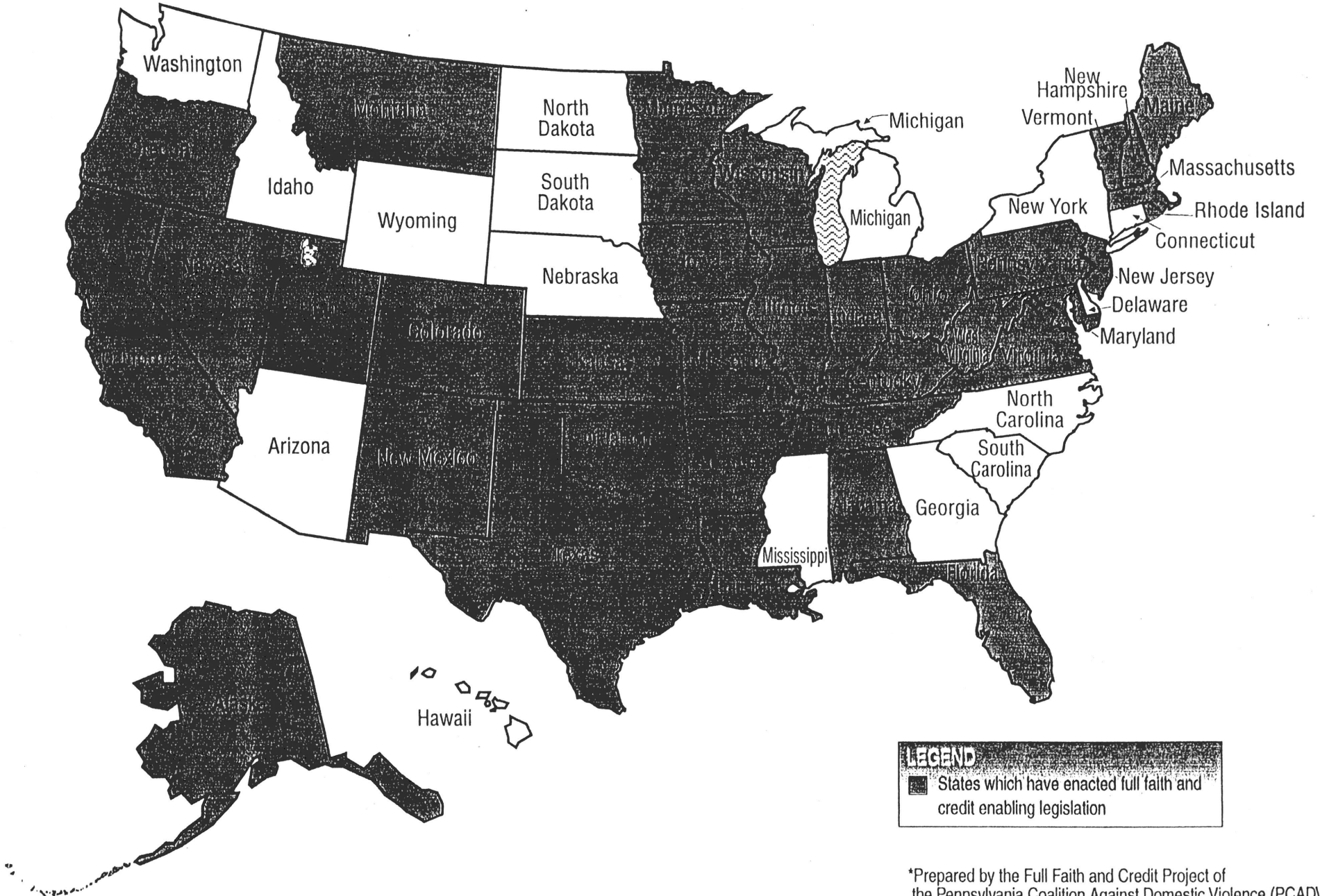
This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Heidi Heitkamp
ATTORNEY GENERAL

Assisted by: Robert P. Bennett
Assistant Attorney General

vkk

FFC Enabling Legislation



LEGEND
■ States which have enacted full faith and credit enabling legislation

*Prepared by the Full Faith and Credit Project of the Pennsylvania Coalition Against Domestic Violence (PCADV) © August 1997

Full Faith and Credit Provision
of the Violence Against Women Act

A. Statutory overview

The Full Faith and Credit provision of Violence Against Women Act, VAWA, 18 U.S.C. §2265, requires states and Indian tribes to enforce "valid" protection orders issued by foreign states and Indian tribes as if the orders had been issued by the non-issuing, enforcing state or Indian tribe. In other words, whatever the implications of violating a protection order are in the new state or Indian land, these apply to enforcement of the order from the old state or Indian land.¹ In addition, if the person is ineligible for a protection order in the new state but she/he was eligible for the protection order in the old state, the new state must still enforce the foreign order.

B. Valid protection order

A "valid" protection order is defined as a protection order that has been issued by a court which has jurisdiction over the parties and matter under the laws of such state or Indian tribe and in circumstances where the defendant has been given reasonable notice and the opportunity to be heard 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 or tribal law, and, in any event, within a reasonable period of time after the order is issued, sufficient to protect the opposing party's right to due process.

C. Types of protection orders covered by §2265

The full faith and credit provision applies to "any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including temporary and final protection orders issued by civil and criminal courts (other than support or child custody orders) . . ." 18 U.S.C. §2266. In other words, it extends to temporary and final, civil and criminal protection orders.

D. Mutual protection orders

Should the issuing court enter orders of protection against both the plaintiff and the defendant, only the order in favor of the plaintiff/constraining the defendant is entitled to full faith and credit unless the defendant filed a separate petition or pleading seeking such an order and the court made specific findings that the defendant, as well as the plaintiff, was entitled to such an order.

This means that a protection order issued in favor of a defendant and against a battered woman who has filed seeking protection should not be given full faith

¹ Concern currently surrounds the application of this provision on tribal lands as it raises a number of issues which impact on the sovereignty of Indian nations.

and credit unless the batterer filed a cross or counter petition also seeking an order of protection and the court made specific findings that the defendant was entitled to such an order.

For this reason, it is imperative that advocates fully inform battered women of the ramifications of agreeing to mutual consent orders that include findings of fact that the defendant is entitled to such an order, i.e., that the plaintiff has inflicted acts of abuse upon the defendant.

E. Implementation

The full faith and credit provision of the VAWA does not prescribe the specific procedures that a battered woman must follow in order to qualify for interstate enforcement. Nevertheless, a number of states have enacted legislation and established procedures to facilitate full faith and credit implementation. (See **Map -- FF&C Enabling Legislation**) A battered woman who is planning to relocate to another state should comply in advance with the new state's procedures to ensure proper enforcement of her foreign order.

F. Law Enforcement

Police officers should enforce out-of-state protection orders that are presented to them if the orders appear valid on their face. In other words, if a battered woman shows the officer her foreign order, the officer should enforce it as long as it contains both parties' names and has not yet expired. Even if the out-of-state order is uncertified, it should be enforced if it meets the requirements of facial validity.

Many police officers express concern about liability for false arrest if they enforce a foreign order which has not been reviewed by a court in the enforcing state. Officers too often are unaware that they are exposed to liability for failure to arrest if they refuse to enforce a valid out-of-state order. More importantly, police officers should recognize the dangers that battered women face when abusers follow them to another state or tribal land in violation of protection orders. This stalking behavior may evidence acute desperation and a settled intent to use whatever force may be necessary to compel the battered woman back into a relationship with the assailant. The sharply escalated dangers posed by assailants in interjurisdictional pursuit is best met with vigorous enforcement by law enforcement in whatever jurisdiction a violation occurs.

In response to law enforcement's concerns, a number of states have enacted qualified immunity statutes which protect police officers from liability and enable them to arrest if there is probable cause to believe that a violation occurred. (See **Model FF&C Enabling Statute**)

Even if the battered woman does not have a copy of the foreign order with her, the law enforcement officer should attempt to verify the existence and terms of her order through communication (via telephone, fax, e-mail) with appropriate court or law enforcement personnel in the issuing state or jurisdiction.

If the issuing state has entered the protection order into a centralized database, the officer should be readily able to verify the existence and status of the protection order by contacting the statewide protection order registry.

At the present time, nearly half of the states have established or are developing centrally automated protection order registries. (See **Maps -- Protection Order Registries**) In May of 1997, the National Crime Information Center's Protection Order File will be in operation. Once NCIC's registry is in place, a law enforcement officer may access it to verify the status of a foreign protection order.

G. Judiciary

Judges need to be familiar with the full faith and credit provision of the VAWA when they are issuing and enforcing protection orders. It may be particularly helpful to law enforcement and courts in other judicial districts if issuing judges craft orders that are explicit, unambiguous, comprehensive and legible.

At the time an order is being issued, the judge should inform both parties orally and in writing that the protection order is valid in all fifty (50) states, the District of Columbia, tribal lands, and U.S. territories. More specifically, the judge should advise the party against whom the order is being entered that violations of the protection order are subject to both state and federal criminal penalties. (See **Model Notices to Defendant**)

At the time an order is being enforced, the judge should follow the procedural enforcement mechanisms of the enforcing (non-issuing) state. In other words, if the judge determines there has been a violation of the order, he/she should impose whatever sanctions are available under the laws of the enforcing state for that type of violation.

The judge should enforce the substantive relief that was granted by the issuing state even if the order provides relief that would not be available under the enforcing state's laws. This means that even if the battered woman is ineligible for a protection order in the enforcing state, the judge must enforce her order as long as the issuing judge had the requisite personal and subject matter jurisdiction.

The enforcing judge can determine if the out-of-jurisdiction protection order is still in full force and effect or can obtain clarification as to any questions about the content of the order in a number of ways. In particular, the judge may contact the issuing court in the state where the protection order was entered. Moreover, if a statewide or national protection order registry is in place, the judge may confirm the validity of the foreign order by accessing one or both of these databases.

Beyond this, as a matter of judicial courtesy, an enforcing judge may want, at a minimum, to notify the issuing judge of the enforcement proceedings in the foreign state. Information about the enforcement action will be invaluable to the issuing judge should the case come before him/her for modification, extension, or termination. Furthermore, conversation with the issuing judge

may enhance the enforcing court's insight into the circumstances giving rise to the order and the rationale for specific relief awarded. Judicial communication will advance the protective intent of the codes in the states and tribal nations involved.

An additional method for facilitating interstate enforcement of protection orders is the use of a uniform certification form. The Full Faith and Credit Project of the Pennsylvania Coalition Against Domestic Violence has devised such a form which may be attached to a protection order at the time of issuance. The certification form confirms that the protection order has been entered in compliance with the jurisdictional and due process requirements of the VAWA. (See Model Certification Form and Rationale)

H. Custody

Protection orders often contain provisions granting custody of the parties' minor children to the battered parent. Many civil protection order statutes include temporary custody as one form of available relief since, in the absence of a court order, abusers may threaten to take the children as a means to coerce reconciliation or to punish and control the battered parent. Temporary custody provisions within civil protection orders permit battered parents to avert the retaliatory taking of children and to enhance the safety of both the children and the battered parents. Similarly, visitation provisions are often included in protection orders to prevent any future threats or violence which might result from unprotected access or uncertainty about access arrangements (thus requiring that the victim negotiate the terms and conditions of visitation arrangements with the batterer).

However, currently there is dispute about whether custody and visitation provisions in all protection orders are subject to the full faith and credit mandate of the VAWA. Some, including staff within the United States Department of Justice, have opined that such provisions are entitled to full faith and credit when issued for safety purposes within civil protection orders, but not when restraining orders are issued pursuant to custody and visitation matters filed in divorce proceedings. Other persons submit that the language of the statute explicitly exempts custody and support from the full faith and credit provision in the VAWA. Whichever position eventually prevails, attorneys and advocates for abused parents must address this potential problem when seeking relief under state or tribal protection codes.

The issue of whether custody awards in protection orders are entitled to interstate enforcement turns on three laws: the Violence Against Women Act (VAWA), the Uniform Child Custody Jurisdiction Act (UCCJA), and the Parental Kidnapping Prevention Act (PKPA). Custody provisions within protection orders are entitled to interstate enforcement if they meet the jurisdictional requirements of the UCCJA and the PKPA, otherwise it may be difficult to obtain interstate enforcement.

Every state has adopted its own version of the UCCJA into state law. Under the UCCJA, there are four possible bases for a state to assert jurisdiction in a custody

matter. The first basis is "home state" jurisdiction which is determined by where the child has lived for six (6) consecutive months immediately preceding the filing of the action or, if the child has been wrongfully removed from that state, it remains "home state" for one (1) year. The second is the state where the child and at least one contestant have "significant connections." This basis for jurisdiction, however, may only be invoked if it is in the best interests of the child. The third basis is "emergency jurisdiction" where the child is physically present in the state and is in need of protection from abuse, mistreatment or neglect. Finally, the fourth basis for jurisdiction is where the child is physically present and no other state has jurisdiction. The UCCJA holds "home state" and "significant connections" equal in terms of priority.

The PKPA is federal law, preempting the UCCJA in cases where laws of the issuing and enforcing states conflict. It applies to all interstate child custody cases and requires states to honor sister state's custody and visitation orders, provided they comply with the Act. Under the PKPA there are four bases for the state to assert jurisdiction. These are the same as under the UCCJA; however, the PKPA gives "home state" the highest priority. In other words, "significant connections" under the PKPA applies only if "home state" jurisdiction has been waived. Moreover, no other state may assert jurisdiction when another state has continuing jurisdiction under the PKPA.

Emergency jurisdiction may be confirmed in a non-issuing state, but only temporarily and only to protect endangered children. Some juvenile courts have asserted jurisdiction over children for purposes of protection under the state child protection codes when they conclude that a child who is within the state requires protection of the courts and child protective services in the state to which a parent has fled with the endangered child. The juvenile courts asserting such jurisdiction have articulated that the juvenile code of the asylum state prevails over the PKPA and state custody codes in both states.

In summary, a custody provision within a protection order may not always be easily enforced across state lines. A custody provision in a civil protection order is entitled to full faith and credit if it meets the jurisdictional requirements of the UCCJA and the PKPA. If, however, it does not comply with both laws, it may be difficult to enforce across state lines. Battered women and their attorneys need to be aware of these issues when seeking custody as part of the relief in a protection order.

For more information or for technical assistance, contact Seema Zeya, staff attorney for the Full Faith and Credit Project of the PCADV, at (800) 903-0111 Ext. 2 or (717) 671-4767.

North Dakota's Domestic Violence Centers

Abused Adult Resource Center	Bismarck	(701)-222-8370
Victim Assistance Program	Belcourt	(701)-477-567
Women's Action & Resource Center	Beulah	(701)-873-2274
Family Crisis Center	Bottineau	(701)-228-2028
Safe Alternatives For Abused Families	Devils Lake	(888)-662-7378
DV & Rape Crisis Center	Dickinson	(701)-225-4506
Kedish House	Ellendale	(701)-349-4729
Rape & Abuse Crisis Center	Fargo	(701)-293-7273
Spirit Lake Victim Assistance Pro.	Fort Totten	(701)-766-1816
Tender Hearts Against Family Vio.	Fort Yates	(701)-854-3402
Tri-County Crisis Intervention, Inc.	Grafton	(701)-352-4242
Community Violence Intervention Ctr.	Grand Forks	(701)-746-0405
S.A.F.E. Shelter	Jamestown	(701)-251-2300
Abuse Resource Network	Lisbon	(701)-683-5061
FT. Berthold Coalition Against DV	New Town	(701)-627-4171
Domestic Violence Crisis Center	Minot	(701)-852-22
Domestic Violence Pro., NW, ND	Stanley	(701)-628-3233
Abused Persons Outreach Center	Valley City	(701)-845-0078
Three Rivers Crisis Center	Wahpeton	(701)-642-2115
McLean Family Resource Center	Washburn	(800)-651-8643
Family Crisis Shelter	Williston	(701)-572-0757

How to get
**Full Faith
 and Credit
 Enforcement**



*A Guide for Domestic Violence Victims
 and Their Advocates*

**North Dakota Council on Abused Women's Services/
 Coalition Against Sexual Assault in ND (NCAWS/CASAND)**

412 East Rosser Ave. #320 Bismarck, ND 58501-4046

1-(701)-255-6240 Fax # 1-701-255-1904

THE VIOLENCE AGAINST WOMEN ACT MAKES IT POSSIBLE TO GET YOUR ORDER OF PROTECTION ENFORCED IN OTHER STATES.

The Violence Against Women Act (VAWA) is a law that was passed by Congress in 1994. **It says that all state and tribal courts should enforce orders of protection no matter which court or which state issued the order.** According to this federal law, all orders of protection are good anywhere in the country as long as they meet the following conditions:

- The court order was given by a judge after a person who alleged abuse by a family or household member filed a petition with the court asking for protection.
- The court that issued the order had jurisdiction over the people and case.
- The abuser had notice of the order and had a chance to go to court to tell his/her side of the story.
- In the case of ex parte temporary orders, (sometimes called emergency orders) the abuser will have a chance to go to court to tell his/her side of the story at a hearing which is scheduled at a later date.

Each state must enforce out-of-state orders in the same way it enforces its own orders, and apply the same penalties that it applies to its own orders. This pamphlet gives you general information about how to get your order of protection enforced in a state or tribal jurisdiction different from the one that gave it to you. It also gives you specific information about how to get your order enforced in North Dakota.

GETTING ORDERS OF PROTECTION ENFORCED IN OTHER STATES OR IN TRIBAL JURISDICTIONS

How Do I Get My Order of Protection Enforced By Another State or Tribe. Court orders from other jurisdictions are often referred to as "foreign" orders since they come from another state or a tribal court. The federal law does not require you to take any special steps to get your protective order enforced in other jurisdictions, but many states and tribes have laws or regulations (rules) about how to get foreign protective orders enforced. These rules differ from state to state, and tribe to tribe, so it is important to find out what the rules are before you try to get your order enforced. In most places, having your order enforced is not difficult if you know the rules.

Some states and tribes have rules that require them to notify your abuser if you register your order. It is important to know the rules of the jurisdiction you will be living in or visiting, so you can make an informed decision about how to get your order enforced and whether or not you should register it.

How Can I Find Out What The Rules Are?

1. Before you move to or visit another jurisdiction you can call a domestic violence program in the area you are in to help you find out what the rules are in the place to which you are moving. You can also call a domestic violence program in the area to which you are moving and ask what the rules are and if they will help you get your order enforced.
2. If you do not know how to contact a domestic violence program in your area, call the National Domestic Violence Hot Line (1-800-799-7233) to get the number of a program in that state. Numbers for North Dakota domestic violence programs are listed at the end of this pamphlet.
3. The clerk of court, the local state's attorney, or the United States Attorney's Office may also be able to help you.

Do I Need To Get Someone To Help Me Get My Order Enforced In Another State?

Since this is a new law and there are still many people who do not know about it, you may want to get an attorney or a domestic violence advocate to help you. Most of the time, advocates know the laws and rules about getting orders enforced and they know the court system where they work. In some places, it would be difficult to get your out-of-state order enforced without an advocate. See the program listing in this brochure for ND advocates.

What Things Will I Need To Get My Order Enforced In A New State?

In most places, you will need a certified copy of your order (a certified copy says it is a "true and correct" copy, is signed or initialed by the clerk of the court that gave you the order, and usually has some kind of court stamp). If your copy is not a certified copy, call or go to the court that gave you the order and ask for a certified copy. If you have moved and you did not get a

certified copy, your court clerk, domestic violence advocate, or attorney should be able to help you get a certified copy from the court that gave you the order. If you are moving to a different state or into land under tribal jurisdiction, it may be helpful to take phone numbers for the court clerk in that state or tribal jurisdiction that issued the order and the number of the domestic violence program nearest your new home. Some states maintain computerized registries of protective orders. If the jurisdiction that gave you the protective order has a registry, try to get the phone number of the registry manager, or the number of the local police or sheriff's office that has your order on file.

What If My Out-Of-State Order (Foreign Order) Is Only A Temporary Order And Is Good Only For A Short Time?

Temporary orders can be enforced by other states or tribes just like any other order, as long as your abuser has been served and your abuser will have the opportunity to have a court hearing set before your temporary order expires.

If you have a temporary order, and the abuser was served by the court, the police can enforce it as long as it is in effect. If the abuser was **not** served, and comes around you, law enforcement officers in North Dakota can serve it based on your copy. If your abuser does not obey it after being served, then the police can make an arrest.

The state or tribe to which you are going cannot extend the date of an order issued by another jurisdiction. If you need to have it extended, you will have to contact the court that issued the order and arrange to be at the hearing. If you do not, the order will expire. It may be helpful to have an attorney or a domestic violence advocate help you if you need to have the hearing date changed so that you can attend.

You may be eligible to get a new domestic violence order from North Dakota, but your abuser would receive notice that you are in the state and would have an opportunity to come to the court hearing. A North Dakota court clerk or an attorney can tell you if you're eligible. You will need to decide if it is safe for you to let your abuser know where you have moved.

Are There Any Problems With Getting My Order Enforced In Another State?

There are sometimes problems getting new laws enforced until everyone knows about the law and knows what they are supposed to do to enforce it. Some of the things that might come up include the following:

1. State or Tribal rules. Some states or tribes have rules which can put some victims in danger, for example that the abuser be notified.
2. In some jurisdictions, judges, clerks and police officers may not be very familiar with this law. Although all states and tribes are required to enforce the federal law, you may need an advocate or an attorney to help you.
3. The law is not clear about how the Violence Against Women Act can be used to enforce the parts of protective orders that deal with child custody. There are other laws which govern child custody (the Uniform Child Custody Jurisdiction Act, and the Parental Kidnaping Act). If your order gives you custody of your children and you think that your abuser may try to take your children, it will be very important for you to contact an attorney or advocate to make sure that your order meets the requirements of these laws.
4. If your copy is not a certified copy, the court clerk will try to get a certified copy of the order from the court that gave it to you. The court clerk will let you know if they are having any difficulty getting a certified copy of the order so that you will know in advance if there is a problem. If you have any trusted friends or family, or an attorney in the state where the order was issued, they may be able to help you get a certified copy.

What If The Court That Issued My Order Contacts North Dakota And Says That My Order Has Been Changed Or Is Not Good?

If the North Dakota court is notified that your out-of-state order has been changed in some way, the court in North Dakota will notify you. If your order has been changed without your knowledge, you will have to go back to the state that gave you the order to do something about it. You may need an attorney or a domestic violence advocate to help you. If your order has been revoked, you can not have it enforced by the police in North Dakota. The North Dakota court clerk will be able to tell you if you can get a North Dakota protection order.

GETTING OUT-OF-STATE (FOREIGN) PROTECTIVE ORDERS ENFORCED IN NORTH DAKOTA

How Do I Get My Out-Of-State (Foreign Order) Enforced in North Dakota?

It is very important to make sure that you always have a copy of the order with you. Court orders are enforced by law enforcement (the police department or sheriff's office). Once a law enforcement officer knows about an order the order is supposed to be enforced just as if it were issued in North Dakota. There are two methods to give law enforcement notice of your court order so they can enforce it:

1. You can call any police officer or sheriff if your abuser disobeys the order. When the police get there, you should show them a copy of your order.
2. You can register your order with the district court clerk's office in the county or tribal jurisdiction in which you live.

What Do I Have To Do To Get My Order Registered?

You must take your copy of the order to the district court clerk and say that you would like to get it registered in North Dakota. You will be asked to sign a sworn statement (affidavit) that the copy you have is up to date and a correct copy of the order. It also says that you will notify the court if you learn of any future changes to the order made by the state that gave you the order.

If you have certified copy, (a copy that says it is a "true and correct" copy, is signed or initialed by the clerk of the court that gave the order, and usually has some kind of court stamp), that copy will be delivered to the court and to the local sheriff's department. The sheriff's department will then enter the order into the Protection Order Registry, which is part of North Dakota's current warrant information system (CWIS). Usually, a domestic violence advocate delivers these copies with or for you.

Our thanks to the Kentucky Domestic Violence Association for sharing their work on a similar brochure.



IMPORTANT PHONE NUMBERS

Court Clerk

Enforcing State or Tribe _____

Issuing State or Tribe _____

Domestic Violence Program/Hotline

Enforcing State _____

Issuing State _____

State Law enforcement Agency (Highway Patrol, Bureau of Criminal Investigation)

Enforcing State _____

Issuing State _____

Local Police (City Police or Sheriff; BIA or Tribal Police)

Enforcing State or Tribe _____

Issuing State or Tribe _____

Attorney

Enforcing State _____

Issuing State _____

- #1) **North Dakota Statewide Mental Health Association Helpline**
1-800-472-2911 (in-state only for referral to ND d.v. programs)
- #2) **North Dakota Council on Abused Women's Services/Coalition Against Sexual Assault in ND** 701-255-6240
- #3) **National Domestic Violence Hotline (24 hours)**
1-800-799-SAFE (7233) 1-800-787-3224 (TDD)
- #4) **United States Attorney's Office . . (Fargo) . . 701-239-5671**
United States Attorney's Office . (Bismarck) 701-250-4396

NOTE: The U.S. Attorney's office will determine whether or not a violation of a protection order can be prosecuted under VAWA

Summary of House Bill No. 1077

House Bill No. 1077 provides for the full faith and credit recognition and enforcement of foreign domestic violence protection orders. It is intended to establish the statutory framework for implementing the full faith and credit requirement of the federal Violence Against Women Act, which was adopted in 1994 and codified as 18 USC 2265. A copy of the federal law is attached. The bill is based on the review of statutes adopted in approximately 20 other states. Laws implementing the federal full faith and credit requirement have now been enacted in about 40 states.

Section 1 of the bill would create a new section to NDCC Chapter 14-07.1 to govern full faith and credit recognition and enforcement of foreign protection orders. The *introductory paragraph* and *subsection 1* essentially restate the requirements set out under 18 USC 2265. *Subsection 2* would allow the protected person to file the foreign protection order with the clerk of district court. Filing the order would not, however, be a prerequisite to recognition and enforcement. A filing fee could not be assessed for filing the foreign order with the clerk of district court. *Subsection 3* describes the manner in which law enforcement may rely upon the foreign protection order. A law enforcement officer may rely upon any foreign protection order provided to the officer, may make an arrest for violation of the order in the same manner as for violation of an order issued by a North Dakota court, and may rely upon the statement of the protected person that the order is still in effect and that the respondent was personally served with a copy of the order. A law enforcement officer acting in good faith and without malice in enforcing the foreign order would be immune from civil and criminal liability for any action arising in connection with enforcement of the order. *Subsection 4* would establish a criminal penalty for intentionally providing a foreign protection order known to be false or invalid or for denying that service of the order was made when in fact service had been accomplished.

Section 2 of the bill would amend NDCC Section 14-07.1-06 to clarify the criminal penalty for violation of a foreign domestic violence protection order.

TESTIMONY BEFORE THE
SENATE JUDICIARY COMMITTEE
ON HOUSE BILL NO. 1077
March 1, 1999

My name is Rosellen M. Sand and I am General Counsel for the Attorney General. Since July of this past year I have also helped coordinate the efforts of the Office of Attorney General on the issue of the full faith and credit of domestic violence protection orders.

In 1995 the Attorney General issued an opinion which essentially determined that foreign domestic violence orders must be enforced in North Dakota. I have attached a copy of the opinion for you.

This bill tracks the federal law and is consistent with that opinion. Like the federal law, the bill does not require that foreign domestic violence orders be filed before they can be enforced. The bill merely provides a procedure for filing should a person choose to do so.

The Office of Attorney General supports the passage of House Bill 1077 and asks that you give the bill a do pass recommendation.

BISMARCK
 Abused Adult Resource Center
 222-8370
 BOTTINEAU
 Family Crisis Center
 228-2028
 DENVER LAKE
 Alternatives for
 Families
 1-605-62-7378
 DICKINSON
 Domestic Violence and
 Rape Crisis Center
 225-4506
 ELLENDALE
 Kedish House
 349-4729
 FARGO
 Rape and Abuse Crisis Center
 800-344-7273
 FORT BERTHOLD RESERVATION
 Coalition Against
 Domestic Violence
 627-4171
 FORT YATES
 Tender Heart Against
 Domestic Violence
 854-3402
 GRAFTON
 Tri-County Crisis
 Intervention Center
 352-4242
 GRAND FORKS
 Community Violence
 Intervention Center
 800-405-405
 JAMNATOWN
 S. Shelter
 888-353-7233
 McLEAN COUNTY
 McLean Family
 Resource Center
 800-657-8643
 MERCER COUNTY
 Women's Action and
 Resource Center
 873-2274
 MINOT
 Domestic Violence Crisis
 Center
 852-2258
 RANSOM COUNTY
 Abuse Resource Network
 683-5061
 STANLEY
 Domestic Violence Program,
 NW, ND
 628-3233
 VALLEY CITY
 Abused Persons Outreach
 Center
 845-0078
 WILDETON
 Family Crisis Center
 15
 WILSON
 Family Crisis Shelter
 572-0757

Testimony HB1077
 Senate Judiciary
 March 1, 1999

Chair Stenehjem and Members of the Committee:

My name is Bonnie Palecek, and I am speaking on behalf of the ND Council on Abused Women's Services.

Our coalition is comprised of 20 community based domestic violence/sexual assault agencies which include three tribal organizations and include a close working relationship with a victim witness program on the fourth reservation. Several of our member programs exist on borders with South Dakota, Minnesota, and Montana. We routinely serve victims of domestic violence from other states. We have a lot at stake in the success of full faith and credit and the enabling legislation embodied in HB1077.

The concept of full faith and credit is quite simple: a protection order issued by one state or tribe should be honored by every other state or tribe.

The need for such a law is equally straightforward: the dynamics of domestic violence often precipitate flight. In our mobile society, that flight can easily be across state lines or tribal boundaries. Anything we can do to promote consistency promotes safety.

Law enforcement officers, judges, advocates, and most importantly victims, must all be clear about what the eligibility requirements for full faith and credit actually are in order to facilitate strong enforcement of orders and make it less easy for perpetrators to pursue those victims who are physically fleeing abuse. HB1077 intends to provide that clarity.

In addition, once all 50 states and the Indian tribes within United States borders are on board with relatively consistent codes and statutes, hopefully, the full faith and credit effort will merge well with state and national registries of protection orders currently in process. In North Dakota, for example, nearly every protection order is entered into the state's criminal warrant information system (CWIS). A big boost forward in accomplishing this feat has been the implementation of standardized protection order forms now in use by almost every district court in the state.

Obviously, we are already attempting to implement full faith and credit for protection orders even without this enabling legislation. Our coalition developed the attached guide for victims and advocates, and we are hopeful there will be similar guides developed specifically for judges and law enforcement officers. Tribes and counties are already working together to assure orders issued by tribes within our state borders are honored by district courts and the other way around. It appears to be working. Roberta Crows Breast, director of the Fort Berthold Coalition, indicates that since last October, the Three Affiliated Tribes had honored orders from Williston, Bismarck, Dickinson, and Fort Peck, Montana.

We still need HB1077, however, from our perspective, for three specific reasons:

- 1) The bill clarifies that no fees be charged for filing foreign orders if someone chose to file. We have been assured that on page 2, line 16, even though the language indicates that "a fee for filing the foreign order may not be assessed," the intent is that a fee



must not be assessed, which is in keeping with the current state statute (and a federal Violence Against Women Act provision) that no fees be charged for filing or service of such orders.

- 2) The second important provision underscores the liability protections for law enforcement officers enforcing foreign orders (page 2, lines 22-25). This was a protection they were particularly concerned about.
- 3) Finally, an essential component from our perspective as advocates is the clarification that (page 2, line 15) “filing of a foreign order under this subsection is not a prerequisite to the order’s enforcement in this state.”

Some states are currently attempting to undo statutes which required new filings. Obviously, if a victim of domestic violence was required to refile and thus give notice to an abuser where she/he had currently fled, it would defeat the whole purpose of full faith and credit, which is to extend protections for victims who physically flee violence.

The only issue which has been raised to us since the House hearing is section e, lines 4-6, on page 2 of the bill. Our understanding of the intent here is that dual protection orders will not be given full faith and credit unless there were also dual petitions and dual findings. This would be consistent with our state law and federal requirements, as we understand them.

The vagueness comes relating to whether one-half of the order may be enforceable (the half for which there has been a filing and a finding) or whether the whole order is invalidated. Given the fact that dual orders without separate petitions are unfortunately not uncommon in North Dakota, this is an area that could cause confusion for our law enforcement officers if it is not completely clear in the statute. We are offering the attached amendment for the committee’s consideration.

HB1077 is truly landmark legislation. We are grateful to both the North Dakota Supreme Court and the Attorney General’s Office for their efforts in implementing Full Faith and Credit for protection orders in North Dakota.

Thank you.

VCA - P/H ST 10-15081
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Committee:

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