

## APPENDIX C

### FEDERAL DOMESTIC VIOLENCE LAWS<sup>i</sup>

*Restrictions on the possession of firearms by persons subject to a domestic violence order or convicted of a misdemeanor crime of domestic violence were enacted in 1996 amendments to the federal Gun Control Act. The authority for Congress to act in this area comes from the commerce clause, and by its terms, the Gun Control Act only applies to firearms possessed “in or affecting commerce.” However, the phrase “in or affecting commerce” has been interpreted broadly by the United States Supreme Court such that any gun that has moved across state lines at least once is covered by the Gun Control Act.*

*In 2000, Congress amended the Violence Against Women Act (VAWA) to prohibit interstate domestic violence, stalking, and violations of protection orders. VAWA also requires that states give full faith and credit to domestic violence protection orders issued by other states.*

*In 2005, Congress amended VAWA to enhance judicial and law enforcement tools to combat violence against women. The Violence Against Women and the Department of Justice Reauthorization Act of 2005 was enacted on January 5, 2006.*

*This appendix summarizes the provisions relating to domestic violence in the Gun Control Act and the Violence Against Women Act, and includes excerpts from the relevant federal statutes.*

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## GUN CONTROL ACT OF 1968, AMENDED 1996

### **Possession of Firearms by Persons Subject to a Civil Domestic Violence Restraining Order**

Federal law prohibits possession of a firearm by anyone who is restrained by a domestic violence order for protection. The firearm restriction does not apply to temporary orders for protection which are issued without notice to respondent. The restriction only applies if the order was issued after a hearing for which the person received actual notice and at which the person had the opportunity to participate.

In addition, the protection order must include a finding that the defendant poses a credible threat to the physical safety of the victim or the order must prohibit the defendant from using any force that would cause injury to the victim. Washington mandatory form [DV 3.015, Order for Protection](#) complies with the requirements of this section.

Law enforcement officers are exempted from the application of this restriction as to firearms issued by the state or local government. (See 18 U.S.C. § 925, infra at C-6.)

The penalty for violation of this provision is a fine and/or imprisonment for not more than ten years.

#### **Title 18, United States Code, Section 922(g)(8), Unlawful Acts**

“(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 the 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.”

## **Possession of Firearms by Persons Convicted of a Misdemeanor Crime of Domestic Violence**

It is a federal crime to possess a firearm after conviction for a qualifying misdemeanor crime of domestic violence.

A qualifying crime is one that is a misdemeanor under either federal or state law and has as an element the use or attempted use of physical force or threatened use of a deadly weapon. The crime must also have been committed by:

- 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.

This restriction applies to law enforcement officers.

The restriction does not apply to convictions that have been expunged, pardoned, or as to which civil rights have been restored.

The penalty for violation of this provision is a fine and/or imprisonment for not more than ten years.

### **Title 18, United States Code, Section 922(g)(9), Unlawful Acts**

“(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.”

### **Title 18, United States Code, Section 921, Definitions**

“(a) As used in this chapter—

(33)(A) Except as provided in subparagraph (C)\*, the term ‘**misdemeanor crime of domestic violence**’ means an offense that --

- (i) is a misdemeanor under Federal or State 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, or by a person similarly situated to a spouse, parent, or guardian of 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 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.

**\*No subparagraph (C) was enacted.**

### **Sale or Disposal of Firearms to Persons Convicted of a Misdemeanor Crime of Domestic Violence or Known to be Subject to a Civil Domestic Violence Restraining Order**

It is a federal crime to sell or give a firearm to a person who has been convicted of a misdemeanor crime of domestic violence or a person known to be subject to a civil domestic violence restraining order. The person restrained by the order must have had actual notice of a hearing and the opportunity to participate in the hearing.

The penalty for violation of this provision is a fine and/or imprisonment for not more than ten years.

#### **Title 18, United States Code, Section 922(d), Unlawful Acts**

“(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--

(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; or

(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 of this chapter 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 of this chapter.”

## **Application of Gun Control Act to Law Enforcement Officers**

With some exceptions, possession of a firearm that has been issued by the federal or state government is exempted from the restrictions in the Gun Control Act. However, law enforcement officers are not exempt from the provision that restricts possession of a firearm after conviction of a misdemeanor crime of domestic violence. (18 U.S.C. § 922(g)(9).)

### **Title 18, United States Code, Section 925, Exceptions: Relief from disabilities**

“(a)(1) The provisions of this chapter, except for sections 922(d)(9)\* and 922(g)(9)\*\* and provisions relating to firearms subject to the prohibitions of Section 922(p), shall not apply with respect to the transportation, shipment, receipt, possession, or importation of any firearm or ammunition imported for, sold or shipped to, or issued for the use of, the United States or any department or agency thereof or any State or any department, agency, or political subdivision thereof.”

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\*Section 922(d)(9) prohibits the sale or other disposal of any firearm to a person knowing or having reasonable cause to believe that such person has been convicted of a misdemeanor crime of domestic violence. See page C-7, *supra*.

\*\*Section 922(g)(9) prohibits possession of any firearm by a person who has been convicted in any court of a misdemeanor crime of domestic violence. See page C-6, *supra*.

## Gun Control Act Definitions

### Title 18, United States Code, Section 921, Definitions

“(a) As used in this chapter—

(3) The term ‘**firearm**’ means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(32) The term ‘**intimate partner**’ means, with respect to a person, the spouse of the person, a former spouse of the person, an individual who is a parent of a child of the person, and an individual who cohabitates or has cohabited with the person.

(33) (A) Except as provided in subparagraph (C)\*, the term ‘**misdemeanor crime of domestic violence**’ means an offense that --

(i) is a misdemeanor under Federal or State 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, or by a person similarly situated to a spouse, parent, or guardian of 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 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.”

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\*No subparagraph C was enacted.

# **Violence Against Women Act (VAWA)**

## **Interstate Domestic Violence**

It is a federal crime to cross state or foreign lines or enter or leave Indian country or within the special maritime and territorial jurisdiction of the United States to commit or attempt to commit a crime of violence against an intimate partner. There is no requirement that actual injury be sustained but the defendant must have intended to kill, injure, harass, or intimidate when crossing the line.

It is also a federal crime to force or coerce an intimate partner to cross state or foreign lines or enter or leave Indian country or within the special maritime and territorial jurisdiction of the United States if the conduct or travel leads to the commission or the attempted commission of a crime of violence against the victim.

A crime of violence is defined as an offense that has as an element the use, attempted use or threatened use of physical force against the person or property of another, and any other felony offense that involves a substantial risk of physical force against the person or property of another during the commission of the offense.

### **18 U.S.C. § 2261. Interstate domestic violence (Amended by the Violence Against Women Act of 2005)**

“(a) Offenses.

(1) Travel or conduct of offender. A person who travels in interstate or foreign commerce or enters or leaves Indian country or within the special maritime and territorial jurisdiction of the United States with the intent to kill, injure, harass, or intimidate a spouse, intimate partner or dating partner, and who, in the course of or as a result of such travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(2) Causing travel of victim. A person who causes a spouse, intimate partner or dating partner to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and who, in the course of, as a result of, or to facilitate such conduct or travel, commits or attempts to commit a crime of violence against that spouse, intimate partner, or dating partner, shall be punished as provided in subsection (b).

(b) Penalties. A person who violates this section or section 2261A shall be fined under this title, imprisoned--

(1) for life or any term of years, if death of the victim results;

(2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;

(3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;

(4) as provided for the applicable conduct under chapter 109A [18 U.S.C.S. §§ 2241 et seq.] if the offense would constitute an offense under chapter 109A [18 U.S.C.S. §§ 2241 et seq.] (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and

(5) for not more than 5 years, in any other case, or both fined and imprisoned.

(6) Whoever commits the crime of stalking in violation of a temporary or permanent civil or criminal injunction, restraining order, no-contact order, or other order describes in section 2266 of title 18, United States code, shall be punished by imprisonment for not less than 1 year”

**Note:** Chapter 109A (18 U.S.C.S. §§ 2241 et seq.) deals with sexual crimes.

## Interstate Stalking

It is a federal crime to cross state or foreign lines or within the special maritime and territorial jurisdiction of the United States to stalk another person. There must be proof that the stalking placed the victim in reasonable fear of death, serious bodily injury, or caused substantial emotional distress and the defendant must have intended to kill, injure, harass, or intimidate when crossing the line.

It is also a federal crime to use the mail, any interactive computer service, or any facility of interstate or foreign commerce to engage in a course of conduct that places a person in reasonable fear of death or serious bodily injury.

The penalty for these crimes is the same as for Interstate Domestic Violence. *See* 18 U.S.C. § 2261(b), page C-10, *supra*.

### 18 U.S.C. § 2261A. Stalking (Amended 2005)

"Whoever--

(1) travels in interstate or foreign commerce or within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel places that person in reasonable fear of the death of, or serious bodily injury to, or causes substantial emotional distress to that person, a member of the immediate family (as defined in section 115) of that person, or the spouse or intimate partner of that person; or

(2) with the intent --

(A) to kill, injure, harass, or place under surveillance with intent to kill, injure, harass, or intimidate, or cause substantial emotional distress to a person in another State or tribal jurisdiction or within the special maritime and territorial jurisdiction of the United States; or

(B) to place a person in another State or tribal jurisdiction, or within the special maritime and territorial jurisdiction of the United States, in reasonable fear of the death of, or serious bodily injury to—

(i) that person;

(ii) a member of the immediate family (as defined in section 115 of that person; or

(iii) a spouse or intimate partner of that person;

uses the mail, any interactive computer service, or any facility of interstate or foreign commerce to engage in a course of conduct that causes substantial emotional distress to that person or places that person in reasonable fear of the death of, or serious bodily injury to, any of the persons described in clauses (i) through (iii) of subparagraph (B);

shall be punished as provided in section 2261(b) of this title.”

Section 2261(b) Enhanced penalties for stalking.

“(6) Whoever commits the crime of stalking in violation of a temporary or permanent civil or criminal injunction, restraining order, no-contact order, or other order described in section 2266 of title 18, United States Code, shall be punished by imprisonment for not less than 1 year.”

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\*18 U.S.C. §115(c)(2) provides: “immediate family member of an individual means—

(A) his spouse, parent, brother or sister, child or person to whom he stands in loco parentis; or

(B) any other person living in his household and related to him by blood or marriage;”

## Interstate Violation of a Protection Order

It is a federal crime to cross state or foreign lines or enter or leave Indian country and violate a protection order that protects the victim against violence, threats, harassment against, contact or communication with, or physical proximity to, another person, or that would violate a portion of a protection order in the jurisdiction in which the order was issued.

It is also a federal crime to force or coerce a person to cross state or foreign lines or enter or leave Indian country if the force or coercion leads to a violation of the portion of a Protection Order that prohibits or provides protection against violence, threats or harassment against, contact or communication with, or physical proximity to the protected person.

### 18 U.S.C. § 2262. INTERSTATE VIOLATION OF PROTECTION ORDER.

“(a) Offenses.

(1) Travel or conduct of offender. A person who travels in interstate or foreign commerce, or enters or leaves Indian country, or within the special maritime and territorial jurisdiction of the United States, with the intent to engage in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, and subsequently engages in such conduct, shall be punished as provided in subsection (b).

(2) Causing travel of victim. A person who causes another person to travel in interstate or foreign commerce or to enter or leave Indian country by force, coercion, duress, or fraud, and in the course of, as a result of, or to facilitate such conduct or travel engages in conduct that violates the portion of a protection order that prohibits or provides protection against violence, threats, or harassment against, contact or communication with, or physical proximity to, another person, or that would violate such a portion of a protection order in the jurisdiction in which the order was issued, shall be punished as provided in subsection (b).

(b) Penalties. A person who violates this section shall be fined under this title, imprisoned—

- (1) for life or any term of years, if death of the victim results;
- (2) for not more than 20 years if permanent disfigurement or life threatening bodily injury to the victim results;
- (3) for not more than 10 years, if serious bodily injury to the victim results or if the offender uses a dangerous weapon during the offense;
- (4) as provided for the applicable conduct under chapter 109A\* [18 U.S.C.S. §§ 2241 et seq.] if the offense would constitute an offense under chapter 109A\* [18 U.S.C.S. §§ 2241 et seq.] (without regard to whether the offense was committed in the special maritime and territorial jurisdiction of the United States or in a Federal prison); and
- (5) for not more than 5 years, in any other case, or both fined and imprisoned.

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\*Chapter 109A (18 U.S.C.S §§ 2241 et seq.) deals with sexual crimes.

## Full Faith and Credit Given to Protection Orders

Any protection order that is issued consistent with the requirements of the federal law must be accorded full faith and credit by the courts of another State, Indian tribe, or territory. The protection order is consistent with the federal requirements if:

1. The issuing court has jurisdiction over the parties and the matter under the law of that State, Indian tribe; or territory and
2. Reasonable notice and an opportunity to be heard are given to the person against whom the order is sought sufficient to protect that person's right to due process.

Ex parte orders are covered by these provisions if notice and opportunity to be heard is provided within the time required by the State, tribal, or territorial law.

When according full faith and credit to an order issued by a court of another State, tribe, or territory notice to the party against whom the order was issued is not required, unless the party protected under the order requests it.

### 18 U.S.C. § 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, 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, Indian tribe, or territory.

(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 or tribal 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 or filing of a protection order, restraining order, or injunction [, 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.

(e) Tribal court jurisdiction. For purposes of this section, a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanisms, in matters arising within the authority of the tribe.”

### **Limits on Internet Posting of Protection Order Information**

#### **Note re 18 U.S.C. § 2265(d)(3):**

§ 106 of the Violence Against Women Act Court Training and Improvement Act of 2005, 109 P.L. 162; 119 Stat. 2960, codified 18 U.S.C. 2265(d)(3) was originally in the “STOP GRANT” portion of the VAWA Reauthorization Act and conditioned STOP GRANT funding on compliance with the law. It was moved to the full faith and credit section of the act when the bill reached the US Senate. The Senate version was signed by the President.

The question of how Washington State General Rule (GR) 31 interacts with §106 is somewhat unsettled. In 2004, GR 31 was amended to permit courts to make court records available remotely. As of April of 2006, five counties have made court records—or at least some sub-set of court records—available on line. These include superior courts in King, Pierce, Chelan, Kitsap, and Thurston counties.

The Data Dissemination Committee of the Judicial Information System (JIS) considered some questions relating to the legislation, including:

1. Since this new law was inserted into the full faith and credit sections of VAWA does the internet access restriction apply only to out-of-state protection orders or does this law require restricting remote access to all protection orders?
2. Does this new federal rule conflict with GR 31 and state case law, in particular: [\*Nast v. Michaels\*, 107 Wn.2d 300 \(1986\)](#); [\*Rufer v. Abbott Labs\*, 154 Wn.2d 530 \(2005\)](#) (“We hold that documents filed with the court will presumptively be open to the public unless compelling reasons for closure exist.”); and [\*Dreiling v. Jain\*, 151 Wn.2d 900 \(2004\)](#). (“The open operation of our courts is of utmost public importance. ... Secrecy fosters mistrust. ... [O]penness is a vital part of our constitution and our history. The right of the public, including the press, to access trials and court records may be limited only to protect significant interests, and any limitation must be carefully considered and specifically justified.”)
3. If there is a conflict, how should this conflict be resolved?
4. Does the act prohibit the Administrative Office of the Courts or a court clerk from selling electronic data in bulk if the data includes information that could reveal the identity or location of the protected party? Does it matter whether the government provider knows the buyer will make the information available on a website?
5. Can a court electronically transfer a protective order by email via request from a member of the public?

There has been no clarification from the Department of Justice Office on Violence Against Women regarding this issues.

## Definitions for Terms in VAWA

### 18 U.S.C. § 2266. Definitions (Amended by VAWA 2005)

“In this chapter [18 U.S.C.S. §§ 2266. et seq.]:

(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.

(7) **Spouse or intimate partner.**--The term ‘spouse or intimate partner’ includes--

(A) for purposes of—

(i) sections other than section 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.

(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 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 one 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 and the existence of such a relationship 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.”

## Memo Regarding 2005 Violence against Women Act Legislation

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June 30, 2006

TO: Data Dissemination Committee

FROM: John Bell, Legal Analyst, Office of the Administrator for the Courts

RE: Recent Federal VAWA Legislation and Its Effect on Protection Orders

In early January, President Bush signed into law the appropriations bill for the Department of Justice. This 200 page bill contained the following amendment to the Violence Against Women Act (VAWA)

HR 3402-Violence Against Women and Department of Justice Reauthorization Act of 2005 Section 106 (c)(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 or filing 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. (Emphasis added.)

This section was originally in the “STOP GRANT” portion of the bill and conditioned STOP GRANT funding on compliance with the law, but it was moved to the full faith and credit section of the Act when the bill reached the Senate. The Senate version was signed by the President. 18 USCS § 2265(d)(3). See Appendix A for full version of *Full Faith and Credit Given to Protection Orders* - 18 USCS § 2265.

Though some sources have published commentary (which does not include supporting legal analysis) to the effect that the amendment applies to any protection order published on the Internet, it is my opinion that this legislation only applies to foreign protection orders and not to every protection order filed in state court. (See attachment - Summary of Comments.)

The full faith and credit provision of the Violence Against Women Act says that a valid protection order must be enforced everywhere throughout the country. 18 USCS § 2265(a). [Chapter 26.52 RCW](#), *Foreign Protection Order Full Faith and Credit Act*, specifically recognizes the validity of foreign protection orders in the state of Washington and VAWA’s mandate that every state enforce valid protection orders from other jurisdictions. See RCW 26.52.005<sup>1</sup>

A protection order is considered valid when:

- (1) The issuing court had jurisdiction over the parties; and
- (2) The abuser was given notice and an opportunity to be heard in the issuing court.

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<sup>1</sup> “The problem of women fleeing across state lines to escape their abusers is epidemic in the United States. ... Section 2265 of VAWA ... provides for nation-wide enforcement of civil and criminal protection orders in state and tribal courts throughout the country.”

18 USCS § 2265(b) and RCW 26.52.020.

A person entitled to protection may file a valid foreign protection order by presenting a certified copy to the court clerk where the person entitled to protection resides or feels enforcement may be necessary. If the person entitled to protection does not have a certified copy the court responsible for maintaining the protection order may electronically transmit the foreign protection order to the court clerk. RCW 26.52.030.

However, it is critical to remember that the victim may be fleeing to Washington to avoid domestic violence. There is no need to notify the abuser of the filing of the foreign protection order since he/she would have to be notified when the order was initially issued. The abuser does not need to be notified of the filing or registering of the foreign protection order as such notification would defeat the one of the purposes of the full faith and credit section of VAWA: The ability of a victim to relocate or flee the abuser without being found.

The new language restricting publication of the victim's identity or location only furthers this intent. That this restriction only applies to foreign protection orders is the only logical conclusion that can be reached. This added language simply restricts the issuing state from publishing any information regarding the relocation of the victim (e.g. information regarding the faxing or transmitting the protection order to another jurisdiction) and restricts the enforcing state from publishing information regarding the filing or registering of the foreign protection order. (The registering should not be an issue for Washington Courts as the foreign protection order forms direct the court clerk not to file the form with the court, but to forward to law enforcement. *See* Foreign Protection Order Form, Appendix B.)

Finally, the above legislation should not be read in isolation. The legislation was inserted into the full faith and credit provision of VAWA. This legislation addresses the enforcement of foreign protection orders. In interpreting legislation, the court will not look merely to a particular clause in which general words may be used, but will take in consideration with it the whole statute and the objects and policy of the law. *Stafford v. Briggs*, 444 U.S. 527; 100 S. Ct. 774; 63 L. Ed. 2d 1 (1980). The logical conclusion is the new amended language addresses foreign protection orders, not all protection orders.

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<sup>i</sup> This summary was originally prepared by Susan L. Carlson, Administrative Office of the Courts Legal Analyst for the 2001 *Domestic Violence Manual for Judges*. It was updated by Gloria C. Hemmen, Washington State Gender and Justice Commission Executive Director, in 2006.