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Full Faith and Credit: Interstate Enforcement of Protection Orders Under the Violence Against Women Act of 1994

CATHERINE F. KLEIN*

I. Introduction

In August of 1994, Congress passed the controversial Crime Bill.¹ Amidst the controversy, however, there was one act incorporated into the Bill that received bipartisan support: the Violence Against Women Act of 1994 (VAWA).² The VAWA is one of the Crime Bill's largest crime-prevention programs, providing \$1.6 billion to confront the national problem of gender-based violence.³ The Violence Against Women Act attempts to make crimes committed against women considered in the same manner as those motivated by religious, racial, or political bias. "The Violence Against Women Act is intended to respond both to the underlying attitude that this violence is somehow less serious

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1. Pub. L. No. 103-322, 108 Stat. 1796. The Crime Bill provides for \$30 billion for punishment and prevention programs.

2. The Violence Against Women Act of 1994, Pub. L. No. 103-322, Title IV, 108 Stat. 1902-55 (codified in scattered sections of 8 U.S.C.A., 18 U.S.C.A., & 42 U.S.C.A.) [hereinafter VAWA].

3. See MAJORITY STAFF OF SENATE COMM. ON THE JUDICIARY, 103D CONG., 1ST SESS., THE RESPONSES TO RAPE: DETOURS ON THE ROAD TO EQUAL JUSTICE, at 14 (Comm. Print 1993) [hereinafter EQUAL JUSTICE]. "The Violence Against Women Act recognizes that there is no place—home, street, or school—where women are spared the fear of crime. This bill seeks above all to address the vital necessity and right of women to be free from violence." *Id.*

than other crime and to the resulting failure of our criminal justice system to address such violence."⁴

The VAWA addresses the problems of gender-based violence under five titles. Title I, Safe Streets for Women, increases sentences for repeat offenders who commit crimes against women.⁵ Title II, Safe Homes for Women, focuses on crimes of domestic violence.⁶ Title III, Civil Rights for Women, creates the first civil rights remedy for violent gender-based discrimination.⁷ Title IV, Safe Campuses, grants funds to be spent on problems faced by women on the nation's college campuses. Title V, Equal Justice for Women in the Courts, provides training for state and federal judges to combat widespread gender bias in the courts.

This article focuses on Title II, Safe Homes for Women, specifically, interstate enforcement of protection orders. Prior to the enactment of VAWA, the majority of states did not afford full faith and credit to protection orders issued in sister states.⁸ This was a serious breach in

4. STAFF OF SENATE COMM. ON THE JUDICIARY, THE VIOLENCE AGAINST WOMEN ACT OF 1994, S. REP. NO. 138, 103d Cong., 1st Sess., at 38 (1993).

5. Title I also expands evidentiary protection for sexual assault victims, allocates moneys to states for the purpose of targeting these crimes as a top priority, takes steps to increase safety for women in public parks and transit systems, and creates a Justice Department task force on violence against women.

6. Title II provides for a national, toll-free hotline to assist victims of domestic violence, creates a federal remedy for interstate crimes of abuse, requires states to recognize protection orders issued by sister states, provides more resources to fight domestic violence, and gives states incentives to treat domestic violence as a serious crime.

7. EQUAL JUSTICE, *supra* note 3. Senator Joseph Biden commenting on the new civil rights remedy in the Violence Against Women Act,

I believe that this provision is the key to changing the attitudes about violence against women. This provision recognizes that violent crimes committed because of a person's gender raise issues of equality as well as issues of safety and accountability. Long ago, we recognized that an individual who is attacked because of his race is deprived of his rights to be free and equal; we should guarantee the same protection for victims who are attacked *because* of their gender. Whether the violence is motivated by racial bias or ethnic bias, or gender bias, the laws protection should be the same.

See generally, W.H. Hallock, *The Violence Against Women Act: Civil Rights for Sexual Assault Victims*, 68 IND. L.J. 577, 585 (1993):

Women, and almost exclusively women, of every race, economic class, and ethnic group are the targets of such crime. Since women, because of their very status as women, remain the primary target for sexual assault by men, sex crimes can be considered a form of sex discrimination.

8. Seven jurisdictions have state statutes that accord full faith and credit to foreign protection orders. *See* KY. REV. STAT. ANN. § 426.955 (Baldwin 1993); NEV. REV. STAT. ANN. § 33.090 (1986); N.H. REV. STAT. ANN. § 173B:11-6 (1993); N.M. STAT. ANN. § 40-13-6 (Michie Supp. 1993); OR. REV. STAT. § 24.185 (1993); R.I. GEN. LAWS § 15-15-8 (1994); W. VA. CODE § 48-2A-3(e) (Supp. 1993). New Mexico affords full faith and credit to orders of tribal courts. N.M. STAT. ANN. § 40-13-6(D) (Michie 1994). Nevada accepts a foreign protection order as evidence of the facts on which it was based to issue its own civil protection order. NEV. REV. STAT. ANN. § 33.090 (1993).

the protection afforded victims of domestic violence. Without full faith and credit statutes, a state only has the power to protect victims of domestic violence within its boundaries, limiting the protection afforded to victims if they are forced to move or flee to another state.

Prior to the VAWA, in order to receive protection in the foreign state, a victim had to petition the foreign state's court for a new protection order. Because of due process requirements, the batterer had to be served with notice regarding pending protection proceedings, thus revealing the victim's whereabouts and putting the victim in a dangerous situation. In the absence of a full faith and credit statute, jurisdictional problems could arise. A state may not have jurisdiction to issue a new protection order unless abuse takes place within its boundaries. In addition, there are other problems that arise out of the requirement of refiling for a protection order including: additional filing fees; language barriers; the difference in each state's domestic violence laws regarding availability, duration, and scope of protection; inadequate transportation; access to legal assistance; and child care facilities.

This article examines existing procedures for enforcing interstate protection orders in states that have full faith and credit statutes. It then proposes methods by which practitioners can utilize the VAWA under their state's existing systems and explores model approaches to implementing the VAWA by looking at the roles that practitioners, courts, and law enforcement officials should play. Finally, this article will address the issues of mutual protection orders and the creation of a new federal crime under the VAWA.

II. Full Faith and Credit: An Interpretation of the VAWA

The Violence Against Women Act establishes that states must grant full faith and credit to protection orders issued in foreign states or tribal courts.⁹ Any protection order issued by one state or

9. VAWA, 18 U.S.C.A. § 2265, providing in part:

(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

tribe¹⁰ shall be treated and enforced as if it were an order of the enforcing state. The Act extends to permanent, temporary, and *ex parte* protection orders. Full faith and credit is afforded during the period of time in which the order remains valid in the issuing state. Protection orders are only afforded full faith and credit under the Act, however, if the due process requirements of the issuing state were met. The Act specifies that the issuing court must have had both personal and subject matter jurisdiction, and that the respondent received reasonable notice and an opportunity to be heard. Furthermore, the full faith and credit provision applies to *ex parte* orders if notice and opportunity to be heard were provided within the issuing state's statutory requirement or within a reasonable time after the order was issued. Because the VAWA requires that due process be met before a protection order is afforded full faith and credit, it does not extend full faith and credit to mutual protection orders that do not comply with due process.¹¹

The failure to satisfy due process requirements is the only exception to the full faith and credit provision. A sister state's valid order would be accorded full faith and credit, even if the victim were ineligible for a protection order in the enforcing state. For example, a victim of abuse in a same sex relationship would be able to obtain a protection order in the District of Columbia, but might not be able to obtain one under the laws of Montana.¹² Under the VAWA, however, Montana would have to afford full faith and credit to the order issued by the District of Columbia even though the victim would have been ineligible for protection in Montana.¹³

The VAWA does not require the victim to register her foreign protection order in the enforcing state. Although there are advantages to

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.

10. For the purposes of this article the terms state and court shall also apply to Indian tribes and to tribal courts.

11. VAWA, 18 U.S.C.A. § 2265 (c)(1)(2). See *infra* notes 51-59 and accompanying text discussing mutual protection orders.

12. See MONT. CODE ANN. § 40-4-121 (1994).

13. See Barbara J. Hart, *State Codes on Domestic Violence Analysis, Commentary, and Recommendations*, 43 JUV. & FAM. CT. J. 43, n.4 (1992). Some variations in state domestic violence statutes include: the parties' eligibility for protection, offenses that give rise to protection, and the duration and scope of protection. Prior to the VAWA, these variations might preclude a victim's ability to seek protection in a sister state. See also Catherine F. Klein & Leslye E. Orloff, *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, 21 HOFSTRA L. REV. 801 (1993) (reviewing and analyzing extensively states' civil protection statutes and caselaw).

registering protection orders,¹⁴ requiring registration could leave victims unprotected and vulnerable from the time they enter a new state until the time they become aware of and satisfy registration requirements. Under the VAWA, a victim with a valid protection order receives continuous protection until the expiration of that order, regardless of which state she has entered. Furthermore, even if a victim chooses to register a protection order in a new state, the VAWA does not require the new state to provide the respondent with additional notice. These are important considerations that provide immediate protection while ensuring confidentiality of the victim's whereabouts.

Choice of law is another consideration under the VAWA. Courts have taken several different approaches when facing choice of law problems.¹⁵ The VAWA states that a foreign order is afforded full faith and credit and is "enforced as if it were the order of the enforcing state."¹⁶ If, for example, a woman obtains a protection order in Maryland and later flees to Pennsylvania, which state's law would apply is a choice of law problem. Under the language of the VAWA, it seems clear that Pennsylvania law would apply because the order "shall be enforced as if it were the order of the enforcing state."¹⁷ Thus, Pennsylvania would treat the order as if it had been issued by a court of Pennsylvania and would apply its own law.

III. Examination of Existing State Procedures for Enforcement of Foreign Protection Orders

Because the interstate enforcement provision of the VAWA is vague, states are left to their discretion as how to set up procedures to implement it effectively. Even prior to the enactment of the VAWA, there were a few state statutes that afforded foreign protection orders full faith and credit. New Hampshire, West Virginia, Kentucky, and Oregon have existing procedures to enforce their full faith and credit statutes. Section III of this article will examine the current procedures of Kentucky, West Virginia, and Oregon. This section will also discuss the New Hampshire procedures and suggest that other states use New Hampshire as a model for implementing the interstate enforcement provision of the VAWA. When examining existing state procedures

14. See *infra* note 41 and accompanying text discussing the advantages of registering of protection orders.

15. See generally Herma Hill Kay, *Theory into Practice: Choice of Law in the Courts*, 34 *MERCER L. REV.* 521 (1983) (identifying and evaluating the different choice of law theories used by the courts).

16. VAWA, 18 U.S.C.A. § 2265.

17. VAWA, 18 U.S.C.A. § 2265.

for enforcing the full faith and credit provision, it is important to consider that some of the states' requirements are not in compliance with the VAWA and that the VAWA is superseding.

A. *Kentucky*

The full faith and credit statute in Kentucky applies to any foreign order, not just civil protection orders.¹⁸ The statute states that a copy of any foreign order may be filed with the Kentucky court and is to be treated as if it were an order of the Kentucky court.¹⁹

Prior to the VAWA, Kentucky enforced sister state protection orders under this broad full faith and credit statute by requiring the victim to file a certified copy of the foreign protection order with a Kentucky court. There is a major flaw in this procedure, however, because current Kentucky practice requires that notice of the filing be sent to the respondent. This notice requirement reveals to the batterer the new location of the victim, which may jeopardize the victim's safety.²⁰ Another problem under Kentucky's current full faith and credit statute is that it does not afford a victim complete protection unless she has filed her foreign order with the court. The police will not arrest someone for violation of a foreign protection order that has not been filed. By requiring the victim to file a copy of the foreign order, the state has left victims who have recently fled to Kentucky or who are not aware of the filing requirement extremely vulnerable. If law enforcement agencies will not enforce foreign orders until they are filed with the court, there is a serious gap in the protection afforded to the victims from the time they enter the state until the time they comply with the statute.

Because this broad full faith and credit statute is not designed specifically to address domestic violence orders, it fails to consider the special needs of a victims fleeing from their batterers. Some factors to consider are: victims who have fled their home states because of domestic violence may not be entering Kentucky during court hours; they may not have access to legal assistance, adequate transportation, or adequate child care; and they may fear that by going to court their batterers will be informed of their whereabouts.

18. KY. REV. STAT. ANN. § 426.955 (Baldwin 1993).

19. *Id.*

20. Lisa Lerman, *A Model State Act: Remedies for Domestic Abuse*, 21 HARV. J. LEGIS. 61 (Winter 1984):

If the wife does manage to escape, her husband often stalks her like a hunted animal. He scours the neighborhood, contacts friends and relatives, goes to all the likely places where she may have sought refuge, and checks with public agencies to track her down. . . .

Id. at 79, n.64.

The Kentucky Coalition Against Domestic Violence and the Kentucky Supreme Court have been working together to finalize a process that would prevent disclosure of the victim's new location.²¹ The proposed procedure would require the victim, upon arrival in Kentucky, to take the protection order to the local prosecutor. The local prosecutor would then verify that due process requirements had been met in the state that issued the order. After verification, the prosecutor would then make a motion to the court to have the foreign order entered as a Kentucky order.²² This proposed procedure is to take effect as policy, rather than by written rule or statute. It is presumed that a victim who has fled to Kentucky will become aware of its interstate enforcement procedure by contacting local law enforcement agencies, courts, or domestic violence advocates. The proposed procedure does not address all situations or solve all problems. First, the proposed procedure involving the prosecutor seems more onerous than the prior registration requirement. Also, it is unlikely that prosecutors will make verification of foreign protection orders a priority. It is unclear exactly how a prosecutor will verify a foreign order. Second, these procedures do not cover a victim who needs protection from the batterer, but who has not taken it to a prosecutor to have it verified. It has been suggested that in such a situation, the woman should receive an emergency protection order. Emergency protection orders are available on a twenty-four-hour basis in every county of Kentucky. This alternative would not only give rise to jurisdictional problems, but due process would require that the batterer be informed of the new order and that the batterer be served before the order would be effective. This procedure is inconsistent with the VAWA because it requires a woman who already has a protection order to obtain a new one before she will be protected in Kentucky. This undermines the purpose of the full faith and credit provision in the VAWA.

B. *West Virginia*

Unlike Kentucky, the State of West Virginia has a full faith and credit statute in its Domestic Relations chapter.²³ This statute provides that any foreign order "shall be accorded full faith and credit and be

21. Conversation with Sharon Currens, Kentucky Domestic Violence Association. For information regarding interstate enforcement of protection orders in Kentucky, contact Ms. Currens at 502/526-2189.

22. Conversation with Susan Clary, General Counsel to the Kentucky Supreme Court. For more information on the proposed procedures to enforce foreign protection orders, contact Ms. Clary at 502/564-4176.

23. W. VA. CODE § 48-2A-3(e) (1994).

enforced as if it were an order of this state if its terms and conditions are substantially similar” to those of West Virginia.²⁴ Under this article of the West Virginia Code, there is a subsection that provides for a registry of foreign orders. There is a proviso, however, that says that the registry subsection is not effective until a central automated computer system becomes available. Such a system is not yet available.²⁵

Although there is an absence of an automated computer system, there are current procedures in West Virginia to enforce an out of state order. A protected party entering West Virginia can take a foreign order to a local law enforcement agency. Once filed with the police, the foreign order will be treated by law enforcement as if it were an order of West Virginia. In a situation where a victim is trying to enforce a foreign order, whether it was filed with police or not, a victim can take the order to magistrate court. The magistrate decides whether the terms and conditions of the foreign order are “substantially similar” to the terms and conditions necessary to obtain and order in West Virginia.²⁶ The VAWA does not limit full faith and credit to orders that are “substantially similar” to the orders issued by the enforcing state. Under the VAWA, if due process requirements were satisfied in the issuing state, all other states must accord the order full faith and credit.²⁷

There are no fees either for filing an order with law enforcement agencies or seeking enforcement at magistrate court. It is important that states waive filing fees because the additional economic burden may discourage women from receiving the protection they deserve.

C. Oregon

Oregon also recognizes orders from sister states.²⁸ Upon the victim’s arrival in Oregon, a foreign order is automatically afforded full faith and credit for thirty days.²⁹ The victim has thirty days after entering Oregon to register the order. The victim may register an order after

24. W. VA. CODE § 48-2A-3(e) (1994).

25. For further information regarding interstate enforcement procedures in West Virginia, contact the magistrate court in the county where seeking enforcement.

26. For more information on enforcement of a foreign protection order in West Virginia, contact the West Virginia Coalition Against Domestic Violence at 304/765-2250.

27. *See supra* notes 9-11 and accompanying text discussing due process requirements in the VAWA’s full faith and credit provision.

28. For information regarding enforcement of a foreign protection order in Oregon, contact the Oregon Coalition Against Domestic and Sexual Violence at 503/223-7411.

29. OR. REV. STAT. § 24.185(1) (1993). A foreign protection order is treated like an order issued by Oregon “immediately upon the arrival in this state by the person protected by the restraining order and shall continue to be so treated for a period of thirty days without any further action by the protected person.” *Id.*

thirty days; however, the victim will not be protected until the order is registered. The victim may file at no charge a copy of her order with a clerk of any circuit court.³⁰ After the order is filed, the clerk is required to treat the foreign order in the same manner as an order of the State of Oregon.³¹ If at the time of filing the woman provides written certification that the batterer was personally served in the proceeding that gave rise to the protection order, the clerk will forward a copy of the order to the county sheriff.³² The foreign order is enforceable until it expires under its own terms, or until it is terminated by the Oregon court.³³

An important aspect of Oregon's statute is the enforcement powers granted to law enforcement officers. A police officer may enforce a foreign protection order and make a warrantless arrest in two situations. The first situation is if there is probable cause to believe that an order was violated and the victim provides a copy of a foreign protection order and swears that she has lived in Oregon for thirty days or less. Second, the police officer may also arrest a person if there is probable cause to believe that an order was violated and the victim has filed a copy of her order with the court.³⁴ The legislature has provided qualified immunity for police officers acting on foreign protection orders.³⁵ Police officers are not subject to liability for making arrests on foreign orders as long as the police officer reasonably believes that the document presented to the officer is an accurate copy of the foreign protection order.³⁶

The Oregon statute takes important steps in protecting women from domestic violence. By allowing victims thirty days to file their orders, the statute considers that they may not be able to register their orders immediately upon arrival in the state. Also, the process for registration has been made fairly easy, and with a written certification that the batterer was personally served, a victim is able to have an order forwarded to local law enforcement agencies. Also, by permitting the police to make probable cause arrests for violations of foreign protection

30. OR. REV. STAT. § 24.185(2) (1993).

31. OR. REV. STAT. § 24.115(1) (1993).

32. OR. REV. STAT. § 24.185(3) (1993) (law also provides that after the sheriff receives a copy of a foreign order, the sheriff shall enter the order into the Law Enforcement Data System).

33. OR. REV. STAT. § 24.185(4) (1993).

34. OR. REV. STAT. § 133.310(4)(a)(b) (1993).

35. OR. REV. STAT. § 133.315(2) (1993) (an officer is immune from civil liability if the officer has a reasonable belief that the foreign order is accurate).

36. A representative from the Oregon State Sheriffs' Association suggested that unless the document is written in "Crayola crayons," the police would err on the side of intervening and enforcing the restraining order.

orders and extending qualified immunity to the police, the legislature has taken necessary steps in ensuring that law enforcement officials can play their part in protecting victims of domestic violence.

The state full faith and credit statute does not address all the problems faced by victims of domestic violence who arrive in Oregon. While it does provide victims a thirty day opportunity to register their protection orders, it does not protect women who have been in the state for longer than thirty days and have not yet filed their order. It is important to note that although registration has many advantages, the VAWA full faith and credit provision does not require any registration.

D. New Hampshire

Under New Hampshire state law, a foreign protection order receives full faith and credit. The New Hampshire full faith and credit statute and the procedures used to enforce it currently provide the most extensive protection to a victim with an out of state protection order. The New Hampshire protection order statute provides that any foreign protection order "shall be given full faith and credit throughout the state."³⁷ The only condition is that the foreign order be similar to a protection order issued in New Hampshire.³⁸

The procedures for enforcement under the statute provide that a victim may file a certified copy of any foreign order with any district court and swear under oath that the foreign order is still in effect.³⁹ Next, the clerk of the court must read the foreign order in its entirety to determine whether it is similar to a New Hampshire order as required by the statute. If there are questions regarding the similarity, the clerk may consult a judge. If there are questions about authenticity, however, the clerk may contact a clerk of the issuing state.

If the clerk makes the determination that the foreign order is similar, the clerk then provides the victim with an affidavit to sign, attesting to the fact that the foreign order is still in effect in the issuing state. The foreign order is then attached to the affidavit and filed with the district court.

New Hampshire has a computer generated form called the Foreign Protective Order Affidavit.⁴⁰ The form has two sections. The first section is to be completed and signed by the protected party and also is to be notarized. The second section is a checklist for court use only. The checklist serves as a record of those who have received

37. N.H. REV. STAT. ANN. § 173-B:11-b (1993).

38. *Id.*

39. *Id.*

40. See Appendix for a copy of the Foreign Protective Order Affidavit.

copies of the foreign order and affidavit. The clerk determines which law enforcement agencies should receive copies. For example, copies may be sent to the jurisdictions where the woman lives, works, or perhaps visits family members. If the woman chooses, she may deliver copies of the order and affidavit to the appropriate law enforcement agencies directly. Although the original affidavit and attached foreign order are filed in district court, the clerk is required to carefully note in the record to whom and when copies of the order and affidavit were given or sent. This serves as a method of ensuring that the appropriate law enforcement officials received copies of the protection order.

Another important aspect of the New Hampshire procedures is that foreign orders may be enforceable without any registration. Police officers may rely upon a foreign order if the victim shows the order and makes a verbal statement that the order is still in effect. New Hampshire not only allows officers to enforce foreign orders without a registration requirement but also provides the opportunity for victim's to have their orders sent to the appropriate law enforcement officials. The New Hampshire process allows for the benefits of registration without making it a condition for protection.

IV. Model Approach to Interstate Enforcement Under the VAWA

An assessment of the current applications of state full faith and credit statutes reveals certain essential elements for the successful enforcement of foreign protection orders. None of the states surveyed had fees for a victim to file a protection order in a new state. It is necessary to eliminate additional economic burdens so that all victims will have adequate access to protection.

The VAWA's full faith and credit provision does not require registration of protection orders. Thus, states may encourage registration, but cannot make registration a condition for full faith and credit. Registration can be an important method of combatting domestic violence. There are reasons why registration should be encouraged: It is an excellent method of informing law enforcement officials of existing protection orders and it can relieve law enforcement officials of the burden of assessing the validity of foreign protection orders at the scene of a domestic incident.⁴¹ However, registration should never be a condition

41. The states that currently have registries are Connecticut, Florida, Kentucky, Massachusetts, Rhode Island, South Dakota, and Oregon. See *Developments in the Law—Legal Responses to Domestic Violence: II. Traditional Mechanisms of Response to Domestic Violence*, 106 HARV. L. REV. 1505 (1993).

for enforcement of foreign protection orders. By requiring registration, the very purposes of the VAWA are undermined. A victim may not have access to or knowledge of registration procedures at the time she enters the new state. Mandatory registration leaves the victim unprotected until she is able to register her protection order. Under the VAWA, a victim with a valid foreign protection order should be protected from the moment she crosses state lines.

An important consideration in the enforcement of foreign protection orders is police liability. Police officers play a vital role in preventing domestic violence.⁴² Many victims first learn about the rights and services available to them through police contact.⁴³ More importantly, studies show that effective police responses to domestic violence can prevent future violence. The Minneapolis Domestic Violence Experiment, conducted by the National Institute of Justice, found that "victims of domestic assault are twice as likely to be assaulted again if the police do not arrest the attackers."⁴⁴ Ineffective police responses, however, serve to exacerbate the problems of domestic violence.

Police fear liability when entering into a domestic violence situation, specifically for false arrest.⁴⁵ Because police are essential to the effective enforcement of domestic laws, they must be able to carry out their duties without threat of criminal or civil liability. Many states have explicitly provided qualified immunity for police officers acting under their state's domestic violence statute. Thirty-one states have qualified immunity statutes within their domestic violence code protecting police officers

In order to aid the identification of violators, Massachusetts has created a computerized registry of batterers placed under such orders and domestic abuse offenders generally. . . . The central registry is intended both to enhance effective monitoring in specific cases and to isolate and identify repeat offenders who move between jurisdictions and multiple abusive relationships.

Id. at 1512, n.41.

42. See Klein & Orloff, *supra* note 13, at 1006 (discussing how police act as a critical "link between the abuse victim and the legal and social service systems").

43. See Attorney General's Task Force on Domestic Violence, at 18 (Sept. 1984) (indicating that a law enforcement agency is usually the first and often the only agency called on to intervene in family violence incidents). See also Klein & Orloff, *supra* note 13, at 1007 (listing state statutes that require police to inform domestic violence victims of services available).

44. See Amy Eppler, *Battered Women and the Equal Protection Clause: Will the Constitution Help Them When the Police Won't?*, 95 YALE L. J. 788, 791, n.16 (1986) (study compared the effectiveness of arrest, mediation, or ordering the violent spouse to leave the home).

45. See Lerman, *supra* note 20, at 130 (stating that "[p]olice have expressed concern, that as a result of implementing new domestic violence laws, they will be deluged with litigation brought by irate husbands").

from liability.⁴⁶ Police officers may also assert an immunity defense to federal actions brought under 42 U.S.C. § 1983.⁴⁷

Jurisdictions, concerned about the increased liability that may be faced by an officer's good faith effort to enforce an out of state order, should consider enacting qualified immunity statutes which would apply only to officers' good faith attempts to enforce protection orders, not to the failure to enforce valid orders. Oregon specifically immunizes police officers who make arrests for the violation of a foreign protection order if the officer reasonably believes that the foreign order is an accurate copy.⁴⁸ Moreover, immunity statutes may not be necessary to provide protection to police officers, because common law has traditionally shielded state actors from liability.⁴⁹

Another suggested procedure for states to consider when trying to implement the full faith and credit provision of the VAWA is to make changes to court protection order forms. The court forms should clearly inform both the respondent and law enforcement officials that the order is valid and enforceable in all fifty states, the District of Columbia, and tribal lands. The standardized protection order form should clearly

46. See ALA. CODE § 30-6-12 (1994); ARIZ. REV. STAT. ANN. § 13-3601(B) (1994); ARK. CODE ANN. § 5-53-134(e) (Michie 1993); CAL. FAM. CODE § 6272(b) (Deering 1994); COLO. REV. STAT. § 18-6-803.6 (1994); CONN. GEN. STAT. ANN. § 46(b)-38b (West 1994); D.C. CODE ANN. § 16-1033 (1994); FLA. STAT. ANN. § 741.29 (5) (West 1995); HAW. REV. STAT. § 709-906(6) (1994); IDAHO CODE § 39-6314 (1994); ILL. ANN. STAT. ch. 725, para. 5/112A-31 (Smith-Hurd 1994); IOWA CODE ANN. §§ 236.11, 236.12(4) (West 1994); KAN. STAT. ANN. § 22-2308 (1993); KY. REV. STAT. ANN. § 403.755(2) (Michie/Bobbs-Merrill 1994); LA. REV. STAT. ANN. § 2142 (West 1994); MASS. GEN. LAWS ANN. ch. 209A § 6(7) (West 1994); MINN. STAT. ANN. § 518B.01 (subd. 14(b)) (West 1995); MISS. CODE ANN. § 93-21-27 (1993); MO. ANN. STAT. § 93-21-27 (1993); N.H. REV. STAT. ANN. § 173-B:11-b (1993); N.J. STAT. ANN. § 2C:25-22 (West 1994); N.M. STAT. ANN. § 40-13-7 (Michie 1994); N.C. GEN. STAT. § 50B-5(b) (1994); N.D. CENT. CODE § 14-07.1-11(2) (1993); OR. REV. STAT. § 133.315 (1994); R.I. GEN. LAWS § 12-29-3(d) (1994); UTAH CODE ANN. § 30-6-8 (1994); WASH. REV. CODE § 10.99.070 (1990); WIS. STAT. § 968.075(6m) (1993); WYO. STAT. § 7-20-106 (1994).

47. Laura S. Harper, Note, *Battered Women Suing Police for Failure to Intervene: Viable Legal Avenues After DeShaney v. Winnebago County Dep't of Social Servs.*, 75 CORNELL L. REV. 1393 ("[u]nder the qualified immunity doctrine, state officers performing discretionary functions are immune from lawsuits for damages provided that their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Id.* at 1400.).

48. OR. REV. STAT. § 133.315(2) (1993).

49. Linda B. Lengyel, *Survey of State Domestic Violence Legislation*, 10 LEGAL REFERENCE SERVICES Q. 59 (1990) ("There is substantial authority from the United States Supreme Court and state court decisions to reach the conclusion that the police officer may rely on the general application of the principles of 'good faith', or as it is often called 'qualified immunity'." *Id.* at 74.).

cite the full faith and credit provision of the VAWA as authority. Prior to having court orders changed, practitioners can put law enforcement officials and the respondent on notice by clearly stating that the order is subject to full faith and credit under the VAWA.⁵⁰ This can be achieved by handwriting or typing a statement right on the existing court protection order form that provides notice that the order is subject to full faith and credit pursuant to the VAWA.

V. Mutual Protection Orders

The VAWA addresses the types of mutual protection orders entitled to full faith and credit. A mutual protection order is an order entered against both parties, requiring both to abide by the restraints and other forms of relief in the civil protection order.⁵¹ There are three ways in which a mutual protection order can be issued. The first situation is when the batterer counterclaims or files an independent petition for a civil protection order. Both the petitioner and the respondent must demonstrate abuse that did not occur in self-defense before the judge can issue a valid mutual protection order. The second situation is when the parties agree to a mutual protection order. A third situation can occur when a judge issues an order without a request from either party or upon the request of one party and without hearing evidence as to abuse by both parties. The last two types of mutual orders are excepted from the full faith and credit provision of the VAWA. Congress recognized the problems with mutual orders and through the VAWA put a limit on their use. Mutual orders are not afforded full faith and credit unless both parties submitted a written request for a protection order and the order was issued upon a showing of mutual abuse.⁵²

50. A sample statement could read:

Respondent was afforded both notice and opportunity to be heard in the hearing that gave rise to this order. Pursuant to the Violence Against Women Act of 1994 (Pub. L. No. 103-322, 108 Stat. 1796, 18 U.S.C.A. § 2265), this order is valid in all fifty states, the District of Columbia, tribal lands, and United States territories.

51. Two alternatives to civil protection orders are for the woman to leave her batterer without seeking legal assistance, or for the woman to file criminal charges. For many reasons these alternatives are often less attractive to victims of domestic violence. See Elizabeth Topliffe, *Why Civil Protection Orders Are Effective Remedies for Domestic Violence But Mutual Protective Orders Are Not*, 67 IND. L.J. 1039, 1041-42 (1992).

52. VAWA, 18 U.S.C.A. § 2265 (c)(1)(2). The VAWA states that mutual orders are:

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.

Although some aspects of mutual orders may seem appealing,⁵³ they have been criticized as “undermin[ing] the purpose and strength of domestic violence statutes, which seek to end violence and hold batterers accountable.”⁵⁴ Mutual protection orders, issued absent a showing of mutual abuse, are detrimental because they ignore “due process rights and psychological well-being of the victim, problems with enforcement, and the effect of mutual orders in future judicial proceedings.”⁵⁵

Due process requirements must be met when there is a liberty or property interest at stake. Mutual protection orders seek to deny victims their liberty interest in not being restrained.⁵⁶ For a civil protection order to be issued against a batterer, due process requires that the victim show evidence of abuse or potential danger. Thus, in order for a mutual order to be issued, due process also requires the batterer to make a showing of danger or abuse by the victim. Mutual orders, issued by the court without an evidentiary hearing by both parties, deprives victims of their liberty interests in not being restrained without due process of law.

The psychological well-being of the victim is also adversely affected by the issuance of mutual orders. Mutual orders send a message from the court that somehow the actions of the victims warrant the issuance of a restraining orders against them. Furthermore, mutual orders result in problems of enforcement. Mutual orders fail to identify who is the aggressor and who is the victim which often causes confusion and leads to police arresting the victim, both parties, or no one at all.

Finally, mutual orders impact future proceedings to the disadvantage of the victim.⁵⁷ Evidence of the issuance of a mutual order can be used in future divorce proceedings, thus affecting child custody determinations. The abuser can use a mutual protection order in future civil and criminal proceedings, brought by the victim, as evidence of mutual abuse.

These concerns about the dangers of mutual protection orders are reflected in the VAWA. The VAWA specifically excepts mutual protec-

53. See Topliffe, *supra* note 51 (Stating that attorneys and judges are mistaken in their belief that mutual orders are good because the parties have agreed to it or because they are more expeditious. Victims of domestic violence only agree to mutual orders because of the dynamics of their abusive relationships and that the expeditious process may not be beneficial to victims.).

54. See Klein & Orloff, *supra* note 13, at 1074 (discussing how the legal system’s focus in domestic violence cases should be upon identifying, restraining, and punishing the primary aggressor in the relationship, not the victims who are attempting to protect themselves).

55. See Topliffe, *supra* note 51 (discussing the criticisms and concerns of mutual protection orders).

56. *Id.* at 1058.

57. *Id.* at 1062.

tion orders that are granted without due process from the provision granting full faith and credit to civil protection orders.⁵⁸ Furthermore, the VAWA limits funding to states that fail to enact legislation prohibiting mutual orders without evidence of mutual abuse.⁵⁹

VI. Creation of a New Federal Crime

Two sections of the Safe Homes for Women Act create new federal crimes for domestic violence. These sections may offer victims another avenue of protection through the U.S. Attorney's Offices and the federal courts. Section 2261 makes interstate domestic violence a federal offense.⁶⁰ It is a federal crime to cross state lines with the intent of injuring a spouse or intimate party when such action results in bodily injury. Furthermore, this section states that it is also a federal crime to force a spouse or intimate partner across state lines when an injury occurs as a result of the travel.

Section 2262 makes the interstate violation of a protection order a federal offense.⁶¹ The Act prohibits a person from crossing state lines and engaging in conduct that violates a valid protection order. Proof

58. VAWA, 18 U.S.C.A. § 2265 (c)(1)(2).

59. VAWA, 18 U.S.C.A. § 2101(c)(3), states are eligible for grants if the states certify that their laws, policies, or practices prohibit issuance of mutual restraining orders or protection except in cases where both spouses file a claim, and the court makes detailed findings of fact indicating that both spouses acted primarily as aggressors and that neither spouse acted primarily in self-defense.

60. VAWA, 18 U.S.C.A. § 2261. This section provides in part:

(a) OFFENSES.

(1) **CROSSING A STATE LINE.** 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 who, in the course of or as a result of such travel, intentionally commits a crime of violence and thereby causes bodily injury to such spouse or intimate partner. . . .

(2) **CAUSING THE CROSSING OF A STATE LINE.** A person who causes a spouse or intimate partner to cross a state line or to enter or leave Indian country by force, coercion, duress, or fraud and, in the course of or as a result of that conduct, intentionally commits a crime of violence and thereby causes bodily injury to the person's spouse or intimate partner. . . .

61. VAWA, 18 U.S.C.A. § 2262, providing in part:

(a) OFFENSES.

(1) **CROSSING A STATE LINE.** A person who travels across a state line or enters or leaves Indian country with the intent to engage in conduct that

(A)(i) violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued; or

(ii) would violate subparagraph (A) if the conduct occurred in the jurisdiction in which the order was issued; and

(B) subsequently engages in such conduct. . . .

of specific intent is not required under the Act, rather, a showing of objective evidence is sufficient, such as a history of abuse and the timing of the travel.⁶² This is important in jurisdictions that border other states and interstate travel is frequent.

There are several factors practitioners should consider when advising clients whether to ask the U.S. Attorney's Office to bring a federal action on their behalf. First, there are additional penalties for a defendant found guilty of the new federal crimes of domestic violence.⁶³ The federal crime creates a new penalty for crossing state lines and violating a valid protection order. Second, in a federal suit there is the advantage of federal resources in investigation and prosecution. The Senate Judiciary Committee recognized that the federal crimes were "an appropriate response to the problem of domestic violence, because of the interstate nature, transcend the abilities of state law enforcement agencies."⁶⁴ In addition, section 2264 of the VAWA mandates restitution for victims of these new domestic violence crimes.⁶⁵ Under this section, victims shall receive restitution for the full amount of losses including medical expenses; physical therapy expenses; lost income; attorney fees; and travel, child care, and temporary housing expenses.⁶⁶

In January of 1995, the U.S. Attorney for the Southern District of West Virginia charged a man in the first federal domestic violence case. Christopher Bailey was indicted on January 4, 1995, by a grand jury for interstate domestic violence and federal kidnapping after bringing his unconscious wife to a Kentucky hospital. Bailey faces up to life imprisonment and \$500,000 in fines. The FBI has been involved in the investigation and has alleged that Christopher Bailey seriously injured his wife in their home in West Virginia and then traveled through West Virginia, Kentucky, and Ohio for six days with his wife sometimes tied up in the trunk. Because the federal domestic violence law is untested, Bailey is also charged with federal kidnapping since that crime is "tried and true."⁶⁷

VII. Conclusion

The Violence Against Women Act of 1994 makes an essential step toward providing more extensive protection for victims of domestic

62. S. REP. NO. 138, 103d Cong., 1st Sess., at 61 (1993).

63. *Id.*

64. *Id.* at 62.

65. VAWA, 18 U.S.C.A. § 2264 ("[t]he issuance of a restitution order under this section is mandatory.').

66. VAWA, 18 U.S.C.A. § 2264.

67. Maryclaire Dale, *Man to Face Federal Charges in Wife's Beating*, THE CHARLESTON GAZETTE, Jan. 5, 1995, at P1A.

violence. The federal approach recognizes that domestic violence is a national problem that crosses state lines. First, the VAWA mandates that states recognize and enforce foreign protection orders. The existing procedures in New Hampshire for interstate enforcement most closely correspond to the intent of the VAWA. New Hampshire provides for immediate enforcement of a foreign order without requiring registration of the order. The police are authorized to enforce a foreign order when the victim presents the order and swears to its authenticity. Moreover, New Hampshire has a system in place that allows victims to register their orders and have them sent to appropriate law enforcement agencies. The registration does not require any fees, nor does it require that any notice be sent to the batterer. Furthermore, New Hampshire has a computer-generated form that the protected party signs to certify that the foreign order is presently in effect in the foreign state. The form also serves as a record of those who have received copies of the foreign order.

Second, the VAWA discourages the use of mutual protection orders. The VAWA limits full faith and credit to mutual orders that were issued upon a showing of mutual abuse. The VAWA also extends funding to states that have laws that prohibit the issuance of mutual protection orders unless both parties file a claim, and the court makes a finding that both were primary aggressors.

Finally, the VAWA's creation of federal domestic violence crimes provides a new approach to combat domestic violence. The VAWA makes it a crime to cross state lines and injure a spouse or intimate partner. It is also a federal crime to cross state lines and violate a valid protection order. These new federal crimes provide the advantages of federal resources in investigation and prosecution. Also, under the VAWA, full restitution to the victim is mandated. For these reasons the Violence Against Women Act provides important new protection for victims of domestic violence.

Appendix

THE STATE OF NEW HAMPSHIRE

Merrimack County

Suncook Court

_____ Docket No.

FOREIGN PROTECTIVE ORDER AFFIDAVIT

I, the undersigned, do hereby swear under oath that:

To the best of my knowledge and belief the attached certified copy of the Foreign Protective Order, Docket Number _____, issued in the state of _____, on _____, is presently in effect as written;

Date

Signature of Protected Party

Personally appeared the above named individual and made oath that the above affidavit by him/her subscribed is, in his/her belief, true.

In witness whereof I hereunto set my hand and official seal.

Date

Notary Public/Justice of the Peace

FOR COURT USE ONLY:

Pursuant to RSA 173-B:11-b, the attached order shall be given full faith and credit throughout New Hampshire and be fully enforceable in this state as long as it is in effect in the issuing state. (Check the appropriate box(es) below).

- A copy of this affidavit and the referenced foreign protective order have been mailed/delivered in hand (circle one) to the protected party, to be retained by protected party. Date _____.
- A copy of this affidavit and the referenced foreign protective order has been mailed/delivered in hand (circle one) to _____, the appropriate enforcement agency. Date _____.
- Two copies of this affidavit and the referenced foreign protective order have been delivered in hand to the protected party. The protected party agrees to deliver one copy to _____, the appropriate enforcement agency. Date _____.
- A copy of this affidavit and the referenced foreign protective order have been mailed/delivered in hand (circle one) to _____. Date _____.

Date

Signature of Clerk of Court

