

Violence against Women Act Reauthorization of 2013: New Protections for Native American Survivors of Domestic Violence

What is VAWA?

Congress enacted the Violence against Women Act (“VAWA”) in 1994 in response to the severity of violence against women and the need for a national strategic response. VAWA sought to improve criminal justice and community-based responses to domestic violence, dating violence, sexual assault and stalking in the United States. VAWA strengthened provisions to protect domestic violence victims and hold offenders accountable, and created programs to provide services for victims.

This publication is about the 2013 reauthorization (“VAWA 2013”) which clarified and strengthened the laws addressing violence against Native American and Alaskan Native women. VAWA 2013 has both criminal and civil provisions. **This publication only discusses VAWA’s civil provisions.** You can read [the entire law](http://www.gpo.gov/fdsys/pkg/BILLS-113s47enr/pdf/BILLS-113s47enr.pdf) at <http://www.gpo.gov/fdsys/pkg/BILLS-113s47enr/pdf/BILLS-113s47enr.pdf>.

Why does VAWA have specific provisions for Native Americans?

Native Americans are victims of violent crime at rates more than double those of any other demographic group in the United States.¹ Native women are battered, raped, and stalked at far greater rates than any other population of women in the U.S.:

- 34% of Native women will be raped in their lifetimes.
- 39% will be the victim of domestic violence.²
- 70% of perpetrators of violence against Native women are non-Native.³

Before VAWA 2013, federal case law created some uncertainty regarding tribal courts’ authority to enter domestic violence protection orders in some circumstances.⁴ Section 905 of VAWA 2013 affirmed tribes’ authority to issue and enforce protection orders involving anyone within the Indian tribe’s authority. It also clarifies that tribally issued protection orders are entitled to “full faith and credit” by non-tribal jurisdictions.

¹ American Indians and Crime: A BJS Statistical Profile, 1992 – 2002, US Department of Justice, Office of Justice Programs, http://www.justice.gov/otj/pdf/american_indians_and_crime.pdf.

² [Tribal Law and Order Act, Pub. L. No. 111-211, 202\(a\)\(5\)\(B-C\)](#) (2010).

³ Lawrence Greenfeld & Steven Smith, *American Indians and Crime*, Bureau of Justice Statistics, US Department of Justice, Office of Justice Programs, February 1999.

⁴ See, for example, [Martinez v. Martinez](#), No. C08-5503 FDB (D. Wash. 2008).

What is a protection order?

A “protection order” generally means any type of state, tribal, or local court order whose purpose is to prevent:

- violent or threatening acts or harassment
- sexual violence
- contact or communication with, or physical proximity to, another person

This includes any temporary or final order issued by a civil or criminal court,⁵ such as:

- temporary, ex parte, or final protection orders
- child custody visitation and support provisions contained within a protection order
- bond orders and pre-trial release orders
- orders issued as a condition of diversion, probation, or parole
- temporary or final protection orders issued as part of divorce, custody, or other family law proceedings

Under VAWA, tribal courts have **full jurisdiction** to issue and enforce **civil** protection orders involving **any person** (Indian or non-Indian), **if** both of these are true:

- the court has jurisdiction over the parties under tribal law

- the respondent has reasonable notice and a chance to be heard, sufficient to protect that person’s right to due process

Our publication called [Due Process in Indian Country](#) has more information.

❖ **The civil authority to issue a protection order is different from the criminal authority** to prosecute someone for violating a protection order. For information about a tribe’s authority to prosecute domestic violence offences, see <http://www.justice.gov/tribal/vawa-tribal.html>.

What is a tribe’s “Indian country?”

VAWA 2013 clarifies a tribe’s ability to issue and enforce civil protection orders against Indians and non-Indians. VAWA’s Section 905 grants courts of an Indian tribe full civil jurisdiction to issue and enforce protection orders in matters arising anywhere in the “Indian Country of the Indian tribe” or otherwise within the tribe’s authority. A tribe’s Indian Country includes:

- **Reservation Lands:** Lands within the exterior boundaries of a federally recognized tribe’s reservation.⁶
- **Trust Lands:** Lands set aside for Indians but not within the exterior boundaries of a reservation.⁷

⁵ [18 USC § 2266](#).

⁶ [18 USC §1151\(a\)](#).

⁷ See *Oklahoma Tax Commission v. Chickasaw Nation*, 515 US 450 (1995); *Oklahoma Tax Commission v. Sac & Fox Nation*, 508 US 114 (1993).

- **“Dependent Indian Communities:”**
A legal term for land that is federally supervised and set aside for the use of Indians.⁸
- **Allotments:** Federal parcels of tribal trust land allotted or assigned to particular Indian persons or particular Indian families. Parcels in trust or restricted status are Indian country even if they are not within a reservation.⁹
- **Special Designations:** Congress can designate certain lands as Indian country for jurisdictional purposes even if those lands do not fall within one of the categories mentioned above.¹⁰

What is Full Faith and Credit?

Full Faith and Credit is the recognition and enforcement of the orders and judgments of a court of another jurisdiction. VAWA’s full faith and credit provision ensures that your protection order is enforceable no matter where you are.

❖ Full faith and credit applies to **both** criminal and civil orders.

Example: a member of the Lummi Nation seeks a protection order against her ex-husband, a non-Indian. They both live on the Suquamish reservation. She gets a valid protection order from the Suquamish Tribal

Court. After getting the order, her ex becomes increasingly threatening. She decides to move in with her sister in Seattle. Her Suquamish tribal court protection order is enforceable by the local courts and law enforcement agencies in Seattle.

I have a protection order from tribal court. I am moving off-reservation. Is my protection order still valid?

OR

I have a protection order from state court. I am moving to the reservation. Is my protection order still valid?

The answer to both is yes. Under VAWA, qualifying protection orders (orders that meet the law’s requirements) are enforceable throughout the U.S. Protection orders issued by state courts are also valid on reservations. Washington law also requires state courts to give full faith and credit to tribal protection orders.¹¹

⁸ [18 USC §1151\(b\)](#); *Alaska v. Native Village of Venetie*, 522 US 520 (1998).

⁹ [18 USC §1151\(c\)](#).

¹⁰ [Public Law 106-568 § 824\(c\)](#).

¹¹ [RCW 26.52.020](#).

❖ **NOTE:** Some courts may try to impose requirements for certification, or special seals, before they will give an order from another jurisdiction full faith and credit. These requirements are not allowed. **VAWA specifically prohibits requirements that create obstacles to enforcement outside of the issuing jurisdiction.**

How do I make sure my protection order is enforced wherever I am?

The law does not require you to register your protection order with a new jurisdiction as prerequisite for enforcement.¹² You should do so anyway. It may make enforcing the order easier.

In Washington State, either you or the issuing court can register a “foreign” protection order (an order issued by another state or Tribe). Not all tribal courts will register a tribal protection order with other jurisdictions. To do it yourself, download the Foreign Protection Order registration form you need to fill out from [this website](#):

<http://www.courts.wa.gov/forms/?fa=forms.static&staticID=14>.

To register a state protection order in tribal court, call the tribe directly. The [State Tribal Directory](#) at

<http://www.goia.wa.gov/tribal-directory/tribaldirectory.pdf> has contact information for tribes within Washington State.

❖ Even if you do not register your protection order, keep a copy of the original protection order and notice of service with you at all times.

What if someone violates a protection order?

A violation of a tribal court protection order can have many consequences:

In tribal court, a petitioner may file a motion asking the court to hold the respondent in contempt for violating the court order. After a finding of contempt, the court can impose jail time, a fine, or both. A tribal prosecutor may also file criminal misdemeanor charges for violation of the protection order.

If a state court is enforcing a tribal court order, and the order specifically indicates that a violation will be a crime, consequences include arrest without a warrant, being subject to electronic monitoring, or other penalties for being in contempt of court.

Is there a national tribal registry of protection orders?

No. Currently, there is no national tribal registry for protection orders.

¹² [18 USC § 2265\(a\)](#); [RCW 26.52.020](#).

Additionally, many, if not most, tribal protection orders are not entered into the National Crime Information Center (NCIC) Protection Order File (POF), a federal registry for protection orders. Some tribes have entered into memoranda of understanding or other cooperative agreements with neighboring state jurisdictions so that the tribal protection orders are entered into the state and federal registries.

What if I need legal help?

The Northwest Justice Project's Native American Unit (NAU) provides free civil

(non-criminal) legal services for people who cannot afford a lawyer in Washington.

- **In King County:** Call 2-1-1.
- **All other counties:** Call the CLEAR hotline toll-free at 1-888-201-1014, between 9:15 a.m. and 12:15 p.m., Monday through Friday. If you are deaf or hard of hearing, call 1-888-201-1014 using your preferred TTY or Video relay service. You can also apply online with [CLEAR*Online](http://nwjustice.org/get-legal-help) - <http://nwjustice.org/get-legal-help>.
- **Persons 60 and Over:** Persons 60 or over may call CLEAR*Sr at 1-888-387-7111, regardless of income.

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of December 2016.

© 2016 Northwest Justice Project — 1-888-201-1014.

(Permission for copying and distribution granted to the Alliance for Equal Justice and to individuals for non-commercial purposes only.)