



A PRACTITIONER'S GUIDE TO THE

Violence Against Women Act (VAWA)



Overview



What type of law is it?

The VAWA is a federal law. Its official citation is as follows: Pub. L. No. 103-322, Pub. L. No. 106-386, Pub. L. No. 109-162, Pub. L. No. 113-4, Pub. L. No. 117-103, (codified in scattered sections of 8, 16, 18, 28, and 42 U.S.C.).



Why was it enacted?

The comprehensive federal law was designed to prevent violent crimes against women, hold perpetrators accountable, enhance victim safety, and improve systemic responses to domestic violence, sexual assault and stalking. The VAWA was enacted in 1994 and amended in 2000, 2005, 2013, and 2022.



How does it work?

Among other provisions, the VAWA contains full faith and credit provisions requiring courts and law enforcement to honor and enforce protection orders issued by courts in other states or tribes as long as the orders meet certain requirements. As federal law, the VAWA trumps state law when there is a conflict between the two.

In addition, the Parental Kidnapping Prevention Act (PKPA), which was amended in 2000 as part of the VAWA reauthorization that year, tells courts when to honor and enforce custody determinations issued by courts in other jurisdictions.



What are the significant provisions related to domestic violence and custody?

Full faith and credit for protection orders

Under the VAWA, jurisdictions must honor and enforce certain orders of protection issued by courts in other jurisdictions (18 U.S.C. §§ 2265-2266). The mandate covers protection orders issued to prevent violence, threats, harassment, proximity, or contact, including temporary and final orders issued by civil and criminal courts. For a protection order to be enforceable across state or tribal lines, it must meet the following conditions: 1) the court that issued the order must have had personal jurisdiction over the parties and subject matter jurisdiction over the case, and 2) the respondent must have had notice and an opportunity to be heard.

Custody provisions within protection orders are required to be enforced nationwide under the VAWA

The VAWA, as amended in 2005, explicitly defines the term “protection order” to include “any support, child custody or visitation provisions” issued as part of the order. Thus, the statute’s full faith and credit provisions, which mandate enforcement of a “protection order,” require interstate enforcement of custody provisions within protection orders. There is no doubt that custody provisions within protection orders must be enforced when they comply with the PKPA and with state jurisdictional laws, such as the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). However, the VAWA could be viewed as an independent source of authority requiring custody provisions within protection orders to be enforced across state or tribal lines even when the PKPA and state jurisdictional laws do not require enforcement.

There is only one situation in which the VAWA would need to be used as an independent source of authority for enforcing custody provisions in protection orders. This is where interstate enforcement of an *ex parte* order is sought; the PKPA, the Uniform Child Custody Jurisdiction Act (UCCJA), and the UCCJEA do not require courts to enforce *ex parte* orders across state lines. VAWA, by contrast, covers *ex parte* orders, and so could be useful when custody provisions are issued in *ex parte* protection orders. In the vast majority of cases, however, the VAWA would not need to be used as an independent source of authority.

Victims of domestic violence, sexual assault, and stalking may not be required to pay fees related to protection order and criminal domestic violence cases

The VAWA requires certain grantees, including states receiving STOP Violence Against Women Formula Grants, to certify that their laws, practices and policies do not require victims to pay filing, issuance, registration, modification, enforcement, dismissal, withdrawal or service of a warrant, petition for a protection order, protection order or witness subpoena. This includes the prohibition on costs associated with the filing of criminal charges against the offender in domestic violence, dating violence, sexual assault and stalking offenses. All states currently receive these formula grants, so victims should not be required to pay such costs in any state. See, 34 U.S.C. §10450(a) (1)

This means that a victim who is trying to get a custody provision in an out of state protection order enforced should not have to pay any registration or filing costs.

Eliminates registration/filing prerequisites for enforcement of out of state or tribal protection orders

States and tribes are prohibited from requiring registration or filing as a prerequisite to enforcing out of state or tribal orders of protection.

Prohibits notification to respondent

The VAWA prohibits states and tribes from requiring notification to perpetrators when victims register out of state or tribal protection orders unless the victim requests the notification.

Amends emergency jurisdiction under the PKPA

In 2000, the VAWA broadened the PKPA’s definition of “emergency jurisdiction” to cover domestic violence cases consistent with new state jurisdictional laws. Under the amended PKPA, a court may exercise emergency jurisdiction if the child is physically present in the state and the child has

been abandoned or it is necessary in an emergency to protect the child because the child, a [sibling, or parent of the child](#) has been subjected to or threatened with mistreatment or abuse.

This means that when a victim of domestic violence flees across state lines with the children, if the refuge state exercises emergency jurisdiction when the children were not abused physically, other states must give full faith and credit to that order.

Protects victims' confidential information

Under the VAWA, as amended in 2005 and 2013, all grantees and subgrantees providing victim services are prohibited from sharing personally identifying information about victims without "informed, written, reasonably time-limited consent." In addition, grantee programs may not ask victims to share such information as a condition of eligibility for services, nor may programs share personally identifying information to comply with Federal, State, Tribal, or territorial reporting, evaluation, or data collection requirements. In 2013, the VAWA was amended to clarify that grantees must not disclose, reveal, or release any personally identifying information regardless of whether the information has been "encoded, encrypted, hashed, or otherwise protected."

Recognizes Tribes' jurisdiction over non-Indian defendants in domestic and dating violence cases

In 2013, the VAWA was amended to clarify that Tribes have inherent authority to exercise "special domestic violence criminal jurisdiction" (SDVCJ) over both Indian and non-Indian defendants who commit acts of domestic violence or dating violence or who violate certain protection orders on Tribal lands. In addition, the amendment recognizes that Tribes have sovereign power to issue and enforce civil protection orders against both Indians and non-Indians. Exercise of such authority is wholly voluntary for the Tribes. OVW announced a new grant program to support Tribal government efforts to exercise SDVCJ in May 2016.

In 2022, the VAWA was further amended to change the name SDVCJ to Special Tribal Criminal Jurisdiction to reflect an expansion of the crimes covered by the law, as well as to incorporate additional enhancements in the Tribes' criminal jurisdiction over non-Indian offenders.



VAWA grant programs with particular relevance to protection orders and child custody issues

Legal Assistance for Victims (LAV) Program

Increases the availability of civil and criminal legal assistance needed to effectively aid adult and youth (ages 11 to 24) victims of domestic violence, dating violence, stalking, or sexual assault by providing funds for comprehensive direct legal services to victims in legal matters relating to or arising out of that abuse or violence. "Legal assistance" is defined to include protection order, divorce, parental rights, child support, and other legal matters.

Grants to Support Families in the Justice System (known as "Justice for Families")

Improves the response of the civil and criminal justice system to families with a history of domestic violence, dating violence, sexual assault, and stalking, or in cases involving allegations of child sexual abuse.

Grants to Improve Criminal Justice Responses Program

Encourages state, local, and tribal governments, and courts to improve the criminal justice response to domestic violence, dating violence, sexual assault, and stalking as serious violations of criminal law, and to seek safety and autonomy for victims, by requiring the coordinated involvement of the entire criminal justice system.



Other Current VAWA Grant Programs

Formula Grant Programs

- STOP (Services, Training, Officers, and Prosecutors) Violence Against Women Formula Grant Program
- Sexual Assault Services Formula Grant Program
- State and Territorial Sexual Assault and Domestic Violence Coalitions Program
- Grants to Tribal Domestic Violence and Sexual Assault Coalitions Program

Discretionary Grant Programs

- Consolidated Grant Program to Address Children and Youth Experiencing Domestic and Sexual Assault and Engage Men and Boys as Allies
- Enhanced Training and Services to End Abuse in Later Life Program
- Grants to Enhance Culturally Specific Services for Victims of Sexual Assault, Domestic Violence, Dating Violence, and Stalking Program
- Grants for Outreach and Services to Underserved Populations
- Grants to Reduce Sexual Assault, Domestic Violence, Dating Violence, and Stalking on Campus Program
- Rural Sexual Assault, Domestic Violence, Dating Violence and Stalking Program
- Grants to Tribal Governments to Exercise Special Tribal Criminal Jurisdiction Program
- Sexual Assault Services Culturally Specific Program
- Training and Services to End Violence Against Individuals with Disabilities and Deaf People Program
- Transitional Housing Assistance Grants for Victims of Sexual Assault, Domestic Violence, Dating Violence, and Stalking Program
- Tribal Governments Program
- Tribal Sexual Assault Services Program

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