Passport to Safety
Some Concluding Remarks

Byron Johnson

Neil Websdale

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Overview

As noted in Part 1, the VAWA was enacted as part of the Violent Crime Control and Law Enforcement Act of 1994. Under the VAWA, gender-motivated violence is a form of sex discrimination and as such requires civil rights protection, in the same way as crimes motivated by racial, religious, or political bias. In addition to the aforementioned protections, the VAWA also makes available funds to educate prosecutors and law enforcement officers about domestic violence, to assist jurisdictions to develop pro-arrest policies, to fund new shelters for battered women, to introduce a national domestic violence hotline, to implement community-based domestic violence programs, to improve the enforcement of domestic violence laws in rural communities, and to train judges and court personnel in the finer nuances of domestic violence.

The creation of new offenses regarding interstate domestic violence is just one component of the legislation that confronts gender-based crime. The VAWA also introduces stiffer sentences for repeat sex offenders and additional rape shield evidentiary protections for women victimized by sexual assault. Immigrant women who are the victims of domestic violence are now afforded the right to petition for a reclassification of their status without relying on their batterers.

Since little has been written about the VAWA and particularly the introduction of full faith and credit, information about the VAWA has been limited to the news media and conferences put together specifically to disseminate information. To date, the VAWA has been enforced minimally. This low level of enforcement of the VAWA and full faith and credit may be reflective of a cautious approach to novel legislation, or, of the time-honored bias of the criminal justice system against prosecuting offenses against women, or both.

We have seen from the diverse range of presentations that full and credit provisions under the VAWA hold tremendous potential for battered women and their families. In order to realize this potential contributors to this collection have demonstrated the need to orchestrate the implementation of full faith and credit between and across federal, state, and tribal territories. States, tribes and territories clearly differ in the way they have responded to the full faith and credit legislation. As Seema Zeya indicates, we need much more consistency over issues such as establishing statewide registries, enforcing out-of-state order (filing, registration, accessing registries), and ensuring that women who need protection and the advocates that serve them, know how to help protect victims of interpersonal violence who flee to asylum states. Sims and Zaorski show the technological side of implementing full faith and credit is still in its infancy. Attaching standardized protection orders
attesting to the way in which the original order from an issuing state qualifies for full faith and credit, is a desirable development. Adding details of such orders to the NCIC protective order file which is currently up and running in a handful of states would further enhance the ability of criminal justice personnel to protect women and children.

As Part 2 on current practices revealed, many changes will have to occur in the writing, interpreting and administering of protection orders. Police and judges need to develop enforcement strategies that make paramount the safety of the victims of violence is absolutely paramount. Decisions have to be weighed about when to invoke local statutes for infractions of law by batterers, and when to resort to federal prosecution. In the collection we have tried to highlight the relevance of full faith and credit to child custody disputes, often a lighting rod for further violence, and sadly, lethal violence against women and children. Leslye Orloff and Rachel Rodriguez provide a rich picture of the implications of full faith and credit for migrant women who experience and negotiate unique hurdles in resisting violence by their abusers.

In Part 3 we discussed the possibility of linking lethality risk assessments to the provision of full faith and credit guarantees. Sue Landenwich and Seema Zeya talked about the crucially important role of advocates for battered women. Advocates serve as bridging links in many ways for battered women in crisis who are dealing immensely stressful and dangerous life changes. For sure, if we are to proceed ethically with the implementation of full faith and credit, we must not lose sight of who this legislation is intended to work for. At some level, those working to implement the legislation must use the experiences of battered women as a touchstone for subsequent policy developments. As the final contributor in Part 3, Barbara Hart once again stresses the importance of the VAWA and the real benefits it brings to the lives of women. Barbara raises a series of crucial issues about the implementation of full faith and credit. She also a number of potential solutions. In so doing, she maps out a mix of strategies for battered women, advocates, judges, prosecutors, technologists, and the full range of law enforcement agencies. Her pragmatic suggestions bode well for the future safety of battered adults and their children.

Some of the issues, concerns and questions raised either explicitly or implicitly through this collection warrant restatement. We briefly revisit these issues not because they are the most pressing, but because they are issues that can be worked through with multiagency coordination and cooperation.

**Registration/Validation of Foreign Orders**

Although not required or implied by the VAWA, some states require that women take further steps before their foreign protective orders are "validated" and therefore honored. For example, Nevada law stipulates that Nevada courts only accept a foreign order "as evidence of the facts on which it is based and shall issue its own temporary order or extended order as those facts may warrant" (Nevada Revised Statute 33.090, 1986). This basically means that the woman must apply for a new temporary or extended order. Essentially, then, women must re-apply for a new order of protection. If the states have validation requirements for foreign orders, then local law enforcement will not arrest abusers in breach of foreign orders until the orders have been validated. Similarly, in Missouri the protected party must file a registration petition and attach a copy of the foreign order (See V.A.M.S. 455.067, 1995). She must state that the foreign order is still active. The court then reviews
the order and determines its validity. These determinations in states such as Nevada and Missouri are contrary to both the letter and the spirit of the VAWA and deny women the federal protections guaranteed by the full faith and credit clauses of VAWA (see Lutz & Bonomolo, 1995). Women need protection from the moment they cross state lines because they are particularly vulnerable to lethal violence at this time. This is especially so in cases where women are attempting to break free from abusive relationships by moving to another state. However, while the VAWA does not require registration prior to the enforcement of foreign orders, registration of these orders is clearly one way of ensuring that police and the courts have a greater awareness of their existence and terms.

**Notification Issues: Tipping Off the Abuser?**

In domestic violence cases, local courts can issue temporary (ex-parte) protection orders for a short period of time until a full hearing can be conducted to issue a permanent order. The United States Constitution guarantees accused persons a right to be heard and be notified of the charges leveled against them. Although temporary orders can be issued in the absence of abusers, permanent orders within states require the accused abuser be notified of the hearing. Some states, contrary to the full faith and credit provisions of the VAWA, have interpreted the standard notification practice to mean that if out-of-state orders are to be upheld in their own (asylum) state, then the abuser in the foreign state must be notified of the existence of the order within the asylum state. Missouri law, like that in some other states (see Lutz & Bonomolo, 1995), requires that the abuser be served notice of the order (See V.A.M.S. 455.067, 1995). According to Missouri law, "A copy of the foreign order, the registration petition, and the full faith and credit order will be sent to the opposing party." This service informs the abuser of the fleeing partner's whereabouts, thereby compromising her safety and defeating the object of her leaving for another state. Instead of helping to provide a refuge from the perpetrator, this provision may provide the batterer with a road map to the victim.

**Federal Law and State Rights: Usurping States' Rights?**

For some criminal justice practitioners and politicians, federal full faith and credit initiatives are perceived as a mechanism for usurping states' rights. This concern about the incursions of federal law into state criminal justice practices is as old as the country itself. In this way, full faith and credit is reminiscent of the Civil Rights Act (1964), which has been resisted, undermined, or both, as have other federal initiatives.

Among police, prosecutors, and the judiciary, there is some concern about full faith and credit protections. Maryland police captain Douglas Ward observed recently that police departments were reticent when it came to honoring an out-of-state order unless they had some directives from their own state legislatures. He noted that some officials regard the full faith and credit rule as "unconstitutional" because it is not accompanied by federal funds for enforcement (quoted in Lardner, 1996). In addition, Ward comments: Say we stop a car in the middle of the night and [according to the out-of-state protective order], it's not supposed to be within 1,000 feet [of the woman seeking help]. The first question is, is it a valid order? The second is, generally, we can't enforce a federal statute. That is up to the FBI. (quoted in Lardner, 1996, p.3).
Honoring only "Substantially Similar" or "Similar" Protective Orders

Full faith and credit requires the courts in non-issuing states to enforce foreign orders in the same way they would enforce valid orders in their own jurisdictions. Even if the foreign order offers relief not given by the enforcing state, the enforcing state must provide that relief. For example, if a woman in an abusive lesbian relationship has a foreign protective order against her abuser and the enforcing state does not issue such orders to same sex couples, the enforcing state must nevertheless give full credit to that foreign order and provide the requisite protections. Another example might be where the issuing state offers protective orders for a duration much longer than the enforcing state. In this case, the enforcing state must honor the order of protection for its entire duration, not only for the duration of relief offered within the enforcing state. Put simply, the protective order does not have to be "substantially similar" or "similar" to those issued by the state in which the victim is seeking asylum. This provision of the VAWA has been a major obstacle to the successful implementation of full faith and credit in certain states. Some states have full faith and credit legislation honoring only "substantially similar" or "similar" protective orders to their own. West Virginia will enforce foreign protective orders only if the terms and conditions contained in those orders are "substantially similar" to those offered by West Virginia's courts (WV Code 48-2A-3 (1995). The protected party must take the order to a magistrate, who will decide whether it is "substantially similar." Such legislation is "selective faith and credit" rather than "full faith and credit." Maryland is at even greater odds with federal law. Governor Parris Glendening signed into law H.B. 334, which authorizes law enforcement and the courts to enforce foreign protective orders after October 1996 (more than 2 years after the introduction of full faith and credit) and then only to the extent that Maryland law provides such protections.

Conclusion

In conclusion, further research is needed to identify the best strategies for implementation. Given that full faith and credit is designed to protect battered women, it is essential that these women and their advocates be consulted on all aspects of implementation. Likewise we must learn of the successes and problems with implementation by talking with/interviewing personnel in the many agencies involved in domestic violence work and affected by full faith and credit.

For example, we need to collect information about full faith and credit implementation from women who now have or have had foreign protective orders. In Kentucky, the laboratory state for studying the implementation of full faith and credit, this process of identifying might take place through the LINK system (Law enforcement Information Network of Kentucky), the spouse abuse shelters and their outreach programs, or both. At a minimum, we need to find out from these women how they strategized around the use of foreign orders, and learn more about the street-level handling of their situations. Further, we need to more about levels of enforcement and to ascertain whether conditions existed to warrant prosecution under the VAWA s. 2262 [a] [1].

Researchers might do well to ask battered women about their experiences registering foreign orders. It is also important to learn from court clerks how they deal with foreign orders and how they interact...
with women who have foreign orders. Interviews with battered women and court clerks might provide important information on how and why some women file their foreign orders. However, such interviews would impart little about those women who have foreign orders and decide not to go through the filing and/or certification process. Nor would such interviews tell us about women who might come to certain states because of their superior shelter provisions, but who do not possess or disclose a foreign order specifically because that order would need to be registered. Research is needed that will track women who meet these criteria through domestic violence and spouse abuse centers.

The passage of the VAWA and its full faith and credit guarantees was effected through the hard work of a number of committed individuals from all walks of life, and many different professions. It is up to the ever-expanding network of those involved in the movement to implement this progressive legislation to pass on the word, work on their policies, and to save lives.

References
