3/17/06

TO: Data Dissemination Committee

FROM: John Bell, Legal Analyst

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

This is an informational memorandum to let the committee know the legislation and issue set forth below have come to our attention and that the National Center and some state courts are working on some answers to questions this legislation has raised. Hopefully, we'll have some answers/recommendations by next meeting.

Issue

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.

> 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.

This section was originally in the "STOP GRANT" portion of the bill and conditioned STOP GRANT funding on compliance with the law, but for some reason 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).

This legislation requires the state courts to have a two-tiered access for protection orders. This is contrary to the philosophy behind GR 31 – "if it is public, it is public." Also, implementation could be quite costly and difficult. The level of difficulty and expense depends on the number of protection orders covered by this new law. If it is just out-of-state protection orders, then the

problems are minor. If it applies to all protections orders then we may have problems. Here are some questions that need to be resolved.

Questions

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.") If there is a conflict, how should this conflict be resolved?

3. Does the act prohibit AOC 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?

4. Can a court electronically transfer a protective order by email via request from a member of the public?

June 30, 2006

TO: Data Dissemination Committee

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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[1]

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.

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 been notified when the order was initially issued. The abuser does not need to be notified of the filing or registering of the <u>foreign</u> 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 <u>the full faith and credit</u> 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

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[1] "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."

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.

APPENDIX A

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TITLE 18. CRIMES AND CRIMINAL PROCEDURE
PART I. CRIMES
CHAPTER 110A. DOMESTIC VIOLENCE AND STALKING

18 USCS § 2265

§ 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, tribal, or territorial 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 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.