

DRAFT

FOR DISCUSSION ONLY

**UNIFORM INTERSTATE ENFORCEMENT OF
DOMESTIC VIOLENCE ORDERS ACT**

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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With Prefatory Note and Reporter's Notes

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE ORDERS ACT

PREFATORY NOTE

I. Introduction

The Uniform Interstate Enforcement of Domestic Violence Orders Act (“the Act”) provides a uniform mechanism for the enforcement of foreign domestic violence orders. The need for such a mechanism was created by the recently enacted federal Violence Against Women Act (“VAWA”), 18 U.S.C. Sec. 2265, which requires states to enforce the domestic violence orders of other states. VAWA, however, while mandating enforcement, is either silent or ambiguous regarding several important questions that must be answered in order to establish an effective system for the interstate enforcement of these orders.

First, VAWA does not sufficiently explain the meaning of core requirements of the federal law. For example, VAWA requires that states enforce the orders of other states as if they were the orders of the enforcing state. This mandate, however, does not answer the question of whether states are required to enforce provisions of foreign orders that would not be authorized by the law of the enforcing state. This question, and others, must be answered if there is to be effective uniform enforcement of protection orders. Second, VAWA does not specify the enforcement procedures states must establish to comply with the federal mandate. For example, VAWA is silent on whether individuals seeking the enforcement of a protection order must register or file the order with the enforcing state before action can be taken on their behalf.

The Act, thus, has two main purposes. First, it defines the meaning of full faith and credit in the context of the enforcement of domestic violence orders. Second, it establishes uniform procedures for the effective interstate enforcement of domestic violence orders.

II. The Requirements of Full Faith and Credit

The Act first defines what it means to accord full faith and credit to domestic violence orders. VAWA requires that states enforce the protection orders of other states as if they were the orders of the enforcing states. These orders must be enforced if the issuing tribunals had jurisdiction over both the parties and the matter under the law of the issuing state and if the individual against whom the order is enforced was provided reasonable notice and opportunity to be heard consistent with the right to due process. If the order was obtained ex parte, this notice and opportunity to be heard must be provided

within a reasonable time.

The Act implements this core requirement of VAWA. It also, unlike VAWA, makes it clear that all the terms of the orders of the issuing states must be enforced, even if the law of the enforcing state would not authorize particular terms of the orders. The Act also provides that all protection orders, including those issued by courts as part of a criminal proceeding (provided that a protected individual has the standing to seek enforcement of the provisions of such a criminal order), satisfying the criteria of validity, must be enforced. In addition, terms of orders that concern custody and visitation matters, is issued for the purpose of protection, are enforceable under this Act. Terms that concern support are not. In addition, the terms of mutual protection orders issued in favor of a respondent are also not enforceable if they were not issued in response to a written pleading filed by the respondent and if the issuing tribunal did not make specific findings in favor of the respondent.

III. Enforcement Procedures

The Act also provides uniform procedures for the interstate enforcement of domestic violence orders. The Act envisions that the enforcement of foreign protection orders will require law enforcement officers of enforcing states to rely on probable cause judgments that a valid order has been violated. The Act, however, provides that if a protected individual can provide direct proof of a facially valid order, by, for example, presenting a paper copy or through an electronic registry, probable cause is conclusively established. If no such proof is forthcoming, the Act provides that if officers, relying on the totality of the circumstances, determine that there is a probable cause to believe that a valid protection order has been violated, the order will be enforced. The individual against whom the order is enforced will have sufficient opportunity to demonstrate that the order is invalid when the case is brought before the enforcing tribunal. Law enforcement officers, as well as other government agents, will be encouraged to rely on probable cause judgments by the Act's inclusion of a broad immunity provision, protecting agents of the government acting in good faith.

The Act, once again filling a gap left by VAWA, does not require individuals seeking the enforcement of a protection order to register or file the order with the enforcing state. The Act does, however, include an optional registration process. This process permits individuals to register a protection order by presenting a copy of the order to a responsible state agency or any state officer or agency. The copy presented must be certified by the issuing state. The purpose of these procedures is to make it as easy as possible for the protected individual to register the order and facilitate its enforcement.

**UNIFORM INTERSTATE ENFORCEMENT OF
DOMESTIC VIOLENCE ORDERS ACT**

SECTION 1. DEFINITIONS.

In this [Act]:.

(1) “Foreign protection order” means a protection order issued by a tribunal of another state.

(2) “Issuing State ” means the State whose tribunal issues a protection order.

(3) “Mutual foreign protection order” means a foreign protection order including provisions issued in favor of both the protected individual and the respondent.

(4) “Protected individual” means an individual protected by a protection order. The term includes any individual protected by a protection order no matter whether the individual is styled in the legal proceeding in which the protection order was issued.

(5) “Respondent” means the individual against whom enforcement of a protection order is sought. The term includes any individual against whom enforcement of a protection order is sought no matter how the individual is styled in the legal proceeding in which the protection order was issued.

(6) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band, or Alaskan native village, which has jurisdiction to enter protection orders..

(7) “Tribunal” means an court, agency, or other entity authorized by law to issue,

1 modify, or enforce a protection order.

2 **COMMENTS**

3 The terms “protected individual” and “respondent” refer to the relief sought by the
4 parties in the action brought in the enforcing state. The Act recognizes that they may have
5 been styled differently, e.g. plaintiff, defendant, petitioner, in the issuing state.

6 The term “mutual protection orders” refers to protection orders in which an
7 issuing State includes provisions protecting both parties. Enforcement of these foreign
8 protection orders is governed by Section 3(d).

9 The Violence Against Women Act, 18 U.S.C. Sec. 2265, requires that states
10 accord full faith and credit to tribal protection orders. Like state orders, tribal orders
11 must satisfy the criteria for validity, as defined in Section 3 (b), in order to qualify for
12 interstate enforcement.

13 The Act uses the term “tribunal, rather than “court”, in order to accommodate
14 states that rely upon administrative or other entities to issue, modify, or enforce protection
15 orders.
16

17 **SECTION 2. PROTECTION ORDERS**

18 (a) “Protection order” means an injunction or other order issued by a tribunal to
19 prevent violent or threatening acts or harassment by an individual against, contact or
20 communication with, or physical proximity to another individual. The term includes
21 orders issued by civil and criminal tribunals, whether or not the order was obtained by
22 filing an independent action or is an order pendente lite in another proceeding, if a civil
23 order was issued in response to a complaint, petition, or motion filed by or on behalf of an
24 individual seeking protection. The term does not include orders issued by criminal
25 tribunals which do not grant standing to the protected individual to seek enforcement of

1 the order.

2 (b) “Protection order” includes orders regarding custody and visitation rights if
3 these orders are issued by a tribunal to prevent violent or threatening acts or harassment
4 by an individual against, contact or communication with, or physical proximity to another
5 individual. These orders must be issued in accordance with the jurisdictional requirements
6 governing the issuance of all custody and visitation orders. The term does not include any
7 order for support.

8 COMMENTS

9 The definition of “protection order” is adapted from the Violence Against Women
10 Act, 18 U.S.C. Sec. 2266, which requires states to enforce valid foreign protection orders.
11 This definition includes orders issued by criminal courts in the context of a criminal case.
12 It is not purpose of this section, or that of the federal mandate, either to surpass the
13 constitutional restraints against states enforcing the criminal laws of other states or to
14 disturb the normal process of interstate criminal law enforcement. Rather, these
15 provisions are intended to facilitate the enforcement of orders issued by states which allow
16 the equivalent of civil protection orders to be issued by a criminal court. The Act,
17 therefore, only provides for the interstate enforcement of protection orders issued by
18 criminal courts if the law of the issuing state grants the protected individual standing to
19 enforce the protection order. If the protection order may only be enforced by criminal
20 sanctions upon the request of the state, then it does not qualify for enforcement under this
21 Act. For example, orders issued by criminal courts that provide for the revocation of bail,
22 probation, or parole upon motion by the state will not qualify for enforcement under this
23 Act.

24 The definition of “protection order” includes custody and visitation orders that are
25 issued for the same purpose as protection orders. These orders may only be enforced,
26 however, if they were issued in accordance with the jurisdictional requirements for the
27 issuance of all custody and visitation orders, contained, depending on the state, either in
28 the Uniform Child Custody Jurisdiction Act or the Uniform Child Custody Jurisdiction and
29 Enforcement Act, and the federal Parental Kidnaping Prevention Act. Support orders,
30 however, are not enforceable under this Act; provisions of these orders should be enforced
31 using the process provided in the specific laws governing the issuance, modification, and
32 enforcement of these orders, including, but not limited to, the Uniform Interstate Family
33 Support Act.

1 In addition, the term “protection order” includes an order modifying a previous
2 order. Thus, a modified order, is enforceable, under the Act, in the same manner as a
3 newly issued order.

4 **SECTION 3. JUDICIAL ENFORCEMENT OF ORDERS.**

5 (a) A valid foreign protection order must be enforced by a tribunal of this State. A
6 tribunal of this State shall enforce the terms of a valid foreign protection order as if the
7 order were issued by a tribunal of this State, including terms that provide relief that would
8 not be allowed by the law of this State.

9 (b) A protection order is valid if it:

10 (1) states the name of the protected individual and the respondent;

11 (2) has not been modified or vacated, or has not expired ;

12 (3) was issued by a tribunal that had jurisdiction over the parties
13 and matter under the law of the issuing State; and

14 (4) was issued after the respondent was provided with reasonable
15 notice and had an opportunity to be heard before the tribunal issued the order or, in the
16 case of an order ex parte, the respondent was granted notice and opportunity to be heard
17 within a reasonable time after the issuing of the order, consistent with the rights of the
18 respondent to due process.

19 © A protected individual, in order to establish a prima facie case for the
20 enforcement of a foreign protection order, must present proof of a foreign protection
21 order that is valid on its face. Proof that a foreign protection order, in fact, lacked any one
22 of the indicia of validity described in subsection (b) constitutes an affirmative defense in

1 any action seeking enforcement of the order.

2 (d) A tribunal of this State shall enforce the provisions of a mutual foreign
3 protection order issued in favor of the respondent only upon proof that:

4 (1) the respondent filed a cross-petition or counter petition, complaint, or
5 other written pleading seeking a protection order from the tribunal of the issuing State;
6 and

7 (2) the tribunal of the issuing State made specific findings in favor of the
8 respondent.

9 COMMENTS

10 Subsection (a) implements the core purpose of the mandate of the Violence
11 Against Women Act, 18 U.S.C. Sec. 2265(a). This section requires tribunals of enforcing
12 states to enforce the terms of protection orders of other states as if they were the orders of
13 the enforcing state. This provision means that the tribunals of enforcing states should
14 enforce the specific terms of a foreign protection order even if their state law would not
15 allow the relief in question. For example, if the law of the issuing state allows protection
16 orders to remain effective for a longer period than is allowed by the enforcing state, the
17 tribunal of the enforcing state should enforce the order for the time allowed by the issuing
18 state.

19 The respondent's constitutional right to due process is protected by the
20 opportunity to raise defenses in the enforcement proceeding, as provided in subsection (c).
21 If, for example, the respondent was not provided with reasonable notice and opportunity
22 to be heard by the tribunal of the state issuing the protection order, the enforcing tribunal
23 shall not enforce the order. Thus, the interstate enforcement of a valid foreign protection
24 order, even without a prior hearing, does not deprive the respondent of any rights to due
25 process because the respondent was provided with reasonable notice and opportunity to
26 be heard when the order was issued.

27 The enforcement mechanisms established by the Act do not require the
28 presentation by the protected individual of an authenticated copy of the foreign protection
29 order. While states, as required by the Constitution and federal statutory law, including 28
30 U.S.C. Sec. 1738, must accord properly authenticated foreign judgments full faith and
31 credit enforcement, they may choose to provide full faith and credit to foreign orders they
32 would not be required to enforce under the provisions of the Constitution or other federal

1 law. By adopting this Act, states have chosen to give that extra measure of full and faith
2 credit to foreign protection orders.

3 In addition, in recent years, particularly with regard to the enforcement of
4 domestic relations orders, the federal government has employed the power granted to it by
5 Article IV, Sec. 1 of the Constitution of the United States to prescribe the manner in
6 which states give full faith and credit to the acts, records, and proceedings in other states
7 to require states to enforce the orders of other states in circumstances in which states have
8 traditionally been reluctant to render such enforcement. For example, the federal Parental
9 Kidnaping Prevention Act, 28 U.S.C. Sec. 1738A, requires greater interstate enforcement
10 of child custody orders and the federal Personal Responsibility and Work Opportunity
11 Work Reconciliation Act, 110 Stat. 2105 (1996), requires that states, in order to facilitate
12 the enforcement of support orders, adopt the provisions of the Uniform Interstate Family
13 Support Act. The Violence Against Women Act extends the principle of these laws to the
14 subject of the interstate enforcement of domestic violence orders.

15 Subsection (d), adapted from the federal Violence Against Women Act, 18 U.S.C.
16 Sec. 2265(c), addresses the enforcement of mutual foreign protection orders, which
17 contain provisions protecting both the protected individual and the respondent.
18 Provisions of a mutual foreign protection order issued in favor of the respondent will not
19 be enforced without proof that the respondent filed a cross-petition, counter petition,
20 complaint, or any other written pleading seeking a protection order. If a respondent can
21 prove that he or she made a specific request for relief and that the issuing tribunal made
22 specific findings that the respondent was entitled to the requested relief, the protection
23 orders will be enforced against the protected individual.

24 In order to facilitate the interstate enforcement of foreign protection orders, states
25 should strongly consider requiring tribunals that issue protection orders to state clearly
26 that these orders are entitled to interstate enforcement under both federal and state law.
27 Such enforcement would also be greatly facilitated if issuing states provided each
28 protected individual with a certified copy of the protection order. In addition, states
29 should consider adopting a standard certification or confirmation form stating the
30 protection order issued by their tribunals satisfies the criteria for validity articulated in
31 subsection (b), thus qualifying the protection order for interstate enforcement. Use of the
32 following certification form is recommended.

Judicial District: _____

Address: _____

Phone: _____ Fax: _____

Date: _____

Seal:

1 **SECTION 4. AGENCY ENFORCEMENT OF ORDERS**

2 (a) A law enforcement officer or agency of this State, upon determining that there
3 is probable cause to believe that a valid foreign protection order has been violated, shall
4 enforce the order as if it were the order of a tribunal of this State. Presentation by the
5 protected individual of a protection order that, on its face, meets the indicia of validity
6 described in Section 3(b) shall constitute probable cause that a protection order has been
7 violated. For the purposes of this section, the protection order may be inscribed on a
8 tangible medium or may be stored in an electronic or other medium and is retrievable in
9 perceivable form. Presentation of a certified copy of a protection order is not required for
10 enforcement.

11 (b) In cases where the protected individual does not present a protection order, in
12 determining whether there is probable cause to believe that a valid foreign protection
13 order has been violated, a law enforcement officer or agency may rely upon any source of
14 information relevant to determining whether there is probable cause to believe that a valid
15 foreign protection order has been violated.

16 (c) If a law enforcement officer or agency of this State determines that an
17 otherwise valid foreign protection order cannot be enforced because the respondent has
18 not been notified or served with the order, the officer or agency shall notify the respondent
19 of the terms and conditions of the order and make a reasonable effort to serve the order
20 upon the respondent. After notice and service of the order, the officer or agency shall
21 provide the respondent the opportunity to comply with the order before the order is
22 enforced.

1 (d) Registration or filing an order with this State is not required for the
2 enforcement of valid foreign protection orders pursuant to this [Act].

3 COMMENTS

4 The enforcement procedures in subsection (a) and (b) rely on the sound exercise of
5 the judgment of law enforcement officers and agencies to determine whether there exists
6 probable cause to believe that a valid foreign protection order has been violated. These
7 procedures anticipate that there will be many instances in which the protected individual
8 does not have, or cannot, under the circumstances, produce a paper copy of the foreign
9 protection order. Subsection (a) establishes a per se rule for determining probable cause.
10 If the protected individual presents, whether by providing a paper copy (which need not be
11 certified) of a protection order or through an electronic medium, such as access to a state
12 registry of orders, proof of a facially valid order, the order should be enforced.

13 Subsection (b) concerns the circumstance in which the protected individual cannot
14 present direct proof of the protection order. In this situation, law enforcement officers
15 and agencies are expected to obtain information from all available sources, including
16 interviewing the parties and contacting other law enforcement agencies, to determine
17 whether there is a valid protection order in effect. If the officer or agency finds, after
18 considering the totality of the circumstances, that there is probable cause to believe that a
19 valid foreign protection order has been violated, he or she should enforce the order. If it is
20 later determined that no such order was in place or the order was otherwise
21 unenforceable, law enforcement officers, agencies, or other state officials will be
22 protected by the immunity provision of Section 5 for actions taken in good faith.

23 Subsection (c) provides that if a law enforcement officer or agency discovers in
24 the course of a probable cause investigation that the respondent has not been notified of
25 the issuance of or served with an otherwise valid foreign protection, the officer or agency
26 should then notify the respondent of the terms and conditions of the protection order and
27 make a reasonable effort to serve the respondent with the order. Once served, the
28 respondent should be given an opportunity to comply with order. If the respondent
29 refuses to comply, the order should be enforced.

30 Subsection (d) makes clear that, if a state adopts either its own process for the
31 registration or filing of foreign protection orders or adopts the process provided in Section
32 5, the state shall not require the registration or filing of a foreign protection order for
33 enforcement.

34 **[SECTION 5. REGISTRATION OF ORDERS.]**

35 (a) Any individual may register a foreign protection order with this State. To

1 register a foreign protection order, an individual shall:

2 (1) present a copy of the order to the State agency responsible for the
3 registration of such orders; or

4 (2) present a copy of the order to [any agency designated by the state] and
5 request that the order be registered with the agency responsible for the registration of such
6 orders.

7 (b) Upon receipt of a protection order, the responsible agency shall register the
8 order in accordance with this section. After the order is registered, the responsible agency
9 shall provide the individual registering the order a certified copy of the registered order.

10 (c) The agency of this State responsible for the registration of foreign protection
11 orders shall register an order upon presentation of a copy of a protection order that has
12 been certified by the issuing State . For purposes of this section, this certified copy
13 requirement may only be satisfied by a writing on paper, and may not be satisfied by a
14 record in any other medium, even if such record ultimately may be displayed on paper.

15 (d) An individual registering a foreign protection order must demonstrate that an
16 order is in effect by filing an affidavit that, to the best of that individual's knowledge, the
17 order is in effect.

18 (e) All foreign protection orders registered under this [Act] may be entered in any
19 existing state or federal registries of protection orders, in accordance with state or federal
20 law.

21 (f) Any individual who believes that he has been named the respondent in a foreign
22 protection order that has been registered in this State may prove that the order is not in

1 effect. Upon that proof a registered foreign protection order is not in effect, the agency of
2 this State responsible for the registration of foreign protection orders shall remove the
3 order from the registry and shall notify any state or federal registries which it is aware has
4 registered the foreign protection order that the order is no longer in effect.

5 [(g) A fee may not be charged for the registration of a foreign protection order.]]

6 COMMENTS

7 This section is bracketed because states may prefer to use their existing systems of
8 registration to register foreign protection orders. While a protected individual is not
9 required to register a valid foreign protection order in order for it be enforced, it is highly
10 desirable that states provide an optional registration process. A registration system
11 supplies law enforcement officers and agencies more accurate information, more quickly,
12 about both the existence and status of foreign protection orders and their terms and
13 conditions. An enforcing state may facilitate the collection and dissemination of this
14 information either by establishing a central registry or by providing a process by which
15 information regarding registered orders is distributed to law enforcement officers and
16 agencies across the state. While the management of state registries is purely governed by
17 state law, in implementing a registration system, however, enforcing states should strongly
18 consider keeping these protection orders under seal. The purpose of more effectively
19 protecting victims of domestic violence will be undermined if respondents can use the
20 process of registration to locate the very people who are trying to escape from them.

21 Subsection (a) provides that any person, including a potential respondent, may
22 register foreign protection orders. This reason behind this provision is to ensure that all
23 parties have the opportunity to provide relevant information to the state. Orders, for
24 example, may be modified with custody arrangements.

25 Subsection (c) requires that a person seeking to register a foreign protection order
26 must present a certified copy of that order. The copy must a writing on paper, thus
27 exempting this requirement from the provisions of the Uniform Electronic Transactions
28 Act.

29 Subsection (e) provides that if there the state has registered orders that are no
30 longer in effect, those subject to these orders may, upon sufficient proof, request that
31 these orders be removed from the registry. The precise method of how state and federal
32 registries manage their registries , including the deletion of inaccurate information, is

1 governed by each government's law regarding the management of records.

2 If an order is registered under this Section, the individual who registered the order
3 is expected to inform the enforcing state of any modifications to the registered protection
4 order.

5 Subsection (g) is bracketed because some states may wish to charge a fee for
6 registration.

7 **SECTION 6. IMMUNITY.**

8 This State or a local government entity or a law enforcement officer, law
9 enforcement agency, prosecuting attorney, clerk of court, or any state or local government
10 official acting in an official capacity is immune from civil and criminal liability for acts or
11 omissions arising out of a decision related to the registration or enforcement of a foreign
12 protection order or a decision to detain or arrest an alleged violator of a foreign protection
13 order if the act or omission is done in good faith in an effort to comply with the provisions
14 of this [Act].

15 **COMMENTS**

16 States may, if they wish, substitute their own immunity provisions, so long as law
17 enforcement officers, agencies, or other officials involved in the registration or
18 enforcement of foreign protection orders, under the immunity scheme chosen, are not
19 dissuaded from enforcing such orders because of the fear of potential liability. This
20 immunity provision includes states, local government entities, and all state and local
21 government officials acting in their official capacity in order to prevent those seeking the
22 imposition of criminal and civil liability for acts or omissions done in good faith in an effort
23 to comply with the provisions of this Act from circumventing this immunity provision.
24 The necessity for a generous immunity provision for the enforcement of foreign protection
25 orders does not preclude state and local governments from using personnel and other
26 internal sanctions in order to prevent and punish actions that, in the absence of this
27 immunity provision, would have rendered the government entities, officers, or officials
28 civilly or criminally liable.

1

COMMENTS

2

3

4

This section clarifies that the protection orders enforced under the Act are not the only means of protection available to victims of domestic violence. Other legal remedies, such as tort actions and criminal prosecution, are left undisturbed by this Act.

5

SECTION 9. EFFECTIVE DATE.

6

This [Act] takes effect on -----.