

D R A F T
FOR DISCUSSION ONLY

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

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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DOMESTIC VIOLENCE ORDERS ACT**

WITH PREFATORY NOTE AND REPORTER'S NOTES

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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

3 **PREFATORY NOTE**

4 **I. Introduction**

5 The Uniform Interstate Enforcement of Domestic Violence Orders Act (“the
6 Act”) provides a uniform mechanism for according full faith and credit to foreign
7 domestic violence orders. The need for such a mechanism was created by the
8 recently enacted federal Violence Against Women Act (“VAWA”), 18 U.S.C. Sec.
9 2265, which requires States to accord full and faith credit to the domestic violence
10 orders of other States. VAWA, however, while mandating the grant of full faith and
11 credit, is either silent or ambiguous regarding several important questions that must
12 be answered in order to establish an effective system for the interstate enforcement
13 of these orders.

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

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

29 **II. The Requirements of Full Faith and Credit**

30 The Act first defines what it means to accord full faith and credit to domestic
31 violence orders. VAWA requires that States enforce the protective orders of other
32 States as if they were the orders of the enforcing States. Full faith and credit must
33 be accorded to these orders if the issuing tribunals had jurisdiction over both the
34 parties and the matter under the law of the issuing State and if the individual against
35 whom the order is enforced was provided reasonable notice and opportunity to be

1 heard consistent with the right to due process. If the order was obtained ex parte,
2 this notice and opportunity to be heard must be provided within a reasonable time.

3 The Act implements this core requirement of VAWA. It also, unlike
4 VAWA, makes it clear that all the terms of the orders of the issuing States must be
5 enforced, even if the law of the enforcing State would not authorize particular terms
6 of the orders. The Act also provides that all protective orders, including those
7 issued by courts as part of a criminal proceeding, satisfying the criteria of validity,
8 must be accorded full faith and credit. Terms of orders, however, that concern
9 support and custody matters are not enforceable under this Act. In addition,
10 protective orders issued against a protected individual are also not enforceable if
11 they were not issued in response to a written pleading filed by the respondent and if
12 the issuing tribunal did not make specific findings against both parties.

13 **III. Enforcement Procedures**

14 The Act also provides uniform procedures for the interstate enforcement of
15 domestic violence orders. The Act envisions that the enforcement of foreign
16 protective orders will require law enforcement officers of enforcing States to rely on
17 probable cause judgments that a valid order has been violated. The Act states that if
18 officers, relying on the totality of the circumstances, determine that there is a
19 probable cause to believe that a valid protective order has been violated, the order
20 will be enforced. The individual against whom the order is enforced will have
21 sufficient opportunity to demonstrate that the order is invalid when the case is
22 brought before the enforcing tribunal. Law enforcement officers, as well as other
23 government agents, will be encouraged to rely on probable cause judgments by the
24 Act's inclusion of a broad immunity provision, protecting agents of the government
25 acting in good faith.

26 The Act, once again filling a gap left by VAWA, does not require individuals
27 seeking the enforcement of a protective order to register or file the order with the
28 enforcing State. The Act does, however, include an optional registration process.
29 This process permits, but does not require, a protected individual to register a
30 protective order by presenting a copy of the order to a responsible state agency or
31 any state officer or agency. The protected individual, for the purpose of
32 registration, may demonstrate the validity of the order by filing an affidavit that, to
33 the best of the individual's knowledge, the order is valid. The purpose of these
34 procedures is to make it as easy as possible for the protected individual to register
35 the order and facilitate its enforcement.

1 band, or Alaskan native village, which is recognized by federal law or formally
2 acknowledged by a State.

3 (7) “Tribunal” means an entity authorized by the law of a State to issue,
4 modify, or enforce a protective order.

5 **Reporter’s Notes**

6 The definition of “protective order” is adapted from the Violence Against
7 Women Act, 18 U.S.C. Sec. 2266, which requires States to accord full faith and
8 credit to valid foreign protective orders. This definition includes orders issued by
9 criminal courts in the context of a criminal case. It is not purpose of this section, or
10 that of the federal mandate, either to surpass the constitutional restraints against
11 States enforcing the criminal laws of other States or to disturb the normal process of
12 interstate criminal law enforcement. Rather, these provisions are intended to
13 facilitate the enforcement of orders issued by States which allow the equivalent of
14 civil protective orders to be issued by a criminal court.

15 The definition of “protective order” specifically excludes custody and
16 support orders. The provisions of these orders should be enforced using the process
17 provided in the specific laws governing the issuance, modification, and enforcement
18 of these orders, including, but not limited to, the Uniform Child Custody Jurisdiction
19 Act, the Uniform Child Custody Jurisdiction and Enforcement Act, the federal
20 Parental Kidnaping Prevention Act, and the Uniform Interstate Family Support Act.

21 In addition, the term “protective order” includes an order modifying a
22 previous order. Thus, a modified order, is enforceable, under the Act, in the same
23 manner as a newly issued order.

24 The Violence Against Women Act requires that States accord full faith and
25 credit to tribal protective orders. Like state orders, tribal orders must satisfy the
26 criteria for validity, as defined in Section 2, in order to qualify for interstate
27 enforcement.

28 The Act uses the term “tribunal, rather than “court,” in order to
29 accommodate States that rely upon administrative or other entities to issue, modify,
30 or enforce protective orders.

1 **SECTION 2. ENFORCEMENT OF ORDERS.**

2 (a) A valid foreign protective order, including an order issued before the
3 effective date of this [Act], must be accorded full faith and credit by a tribunal of
4 this State. A tribunal of this State shall enforce the terms of a valid foreign
5 protective order as if the order were issued by a tribunal of this State.

6 (b) A protective order is valid if it:

7 (1) states the name of the protected individual and the individual against
8 whom enforcement is sought;

9 (2) has not expired;

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

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

17 (c) Proof that a foreign protective order lacked any one of the indicia of
18 validity described in subsection (b) is an affirmative defense to any action seeking
19 enforcement of the order.

20 (d) A law enforcement officer or agency of this State, upon determining that
21 there is probable cause to believe that a valid foreign protective order has been
22 violated, shall enforce the order as if it were the order of a tribunal of this State. In

1 determining whether there is probable cause to believe that a valid foreign protective
2 order has been violated, a law enforcement officer or agency may rely upon:

- 3 (1) a copy of the order, if the order is valid on its face;
- 4 (2) oral statements by the petitioner or respondent;
- 5 (3) information obtained from any state or federal registries of protective
6 orders or through communication with law enforcement officers, agencies, or
7 tribunals; or

8 (4) any other source of information relevant to determining whether
9 there is probable cause to believe that a valid foreign protective order has been
10 violated.

11 (e) If a law enforcement officer or agency of this State determines that an
12 otherwise valid foreign protective order cannot be enforced because the respondent
13 has not been notified or served with the order, the officer or agency shall notify the
14 respondent of the terms and conditions of the order and make a reasonable effort to
15 serve the order upon the respondent.

16 (f) Registration or filing an order with the enforcing State is not required for
17 the enforcement of valid foreign protective orders pursuant to this [Act].

18 **Reporter's Notes**

19 Subsection (a) implements the core purpose of the federal full faith and
20 credit mandate of the Violence Against Women Act, 18 U.S.C. Sec. 2265(a). This
21 section requires tribunals of enforcing States to enforce the terms of protective
22 orders of other States as if they were the orders of the enforcing State. This
23 provision means that the tribunals of enforcing States should enforce the specific
24 terms of a foreign protective order even if their state law would not allow the relief
25 in question. For example, if the law of the issuing State allows protective orders to
26 remain effective for a longer period than is allowed by the enforcing State, the

1 tribunal of the enforcing State should enforce the order for the time allowed by the
2 issuing State.

3 In order to facilitate the interstate enforcement of foreign protective orders,
4 States should strongly consider requiring tribunals that issue protective orders to
5 state clearly that these orders are entitled to full faith and credit under both federal
6 and state law and, thus, will be enforced in other States. In addition, States should
7 consider adopting a standard certification or confirmation form stating the
8 protective order issued by their tribunals satisfies the criteria for validity articulated
9 in subsection (b), thus qualifying the protective order for interstate enforcement.

10 As provided in subsection (a), the enforcement mechanisms established by
11 the Act apply to orders that were issued before the effective date of the Act. This
12 provision is not an unconstitutional ex post facto law because, under the Full Faith
13 and Credit Clause of the Constitution of the United States, valid foreign protective
14 orders have always been entitled to full faith and credit enforcement. Both the
15 federal Violence Against Women Act and this Act only ensure that States carry out
16 their constitutional responsibility to enforce these orders.

17 The enforcement procedures in subsection (d) rely on the sound exercise of
18 the judgment of law enforcement officers and agencies to determine whether there
19 exists probable cause to believe that a valid foreign protective order has been
20 violated. These procedures anticipate that there will be many instances in which the
21 protected individual does not have, or cannot, under the circumstances, produce a
22 paper copy of the foreign protective order. In these instances, law enforcement
23 officers and agencies are expected, after assuming control over the parties, to obtain
24 information from all available sources, including interviewing the parties, contacting
25 other law enforcement agencies, and examining copies of any orders, to determine
26 whether there is a valid protective order in effect. If the officer or agency finds,
27 after considering the totality of the circumstances, that there is probable cause to
28 believe that a valid foreign protective order has been violated, he or she, if the
29 enforcing State's laws permit arrest, should arrest the respondent. If it is later
30 determined that no such order was in place or the order was otherwise
31 unenforceable, law enforcement officers, agencies, or other state officials will be
32 protected by the immunity provision of Section 5 for actions taken in good faith.

33 The respondent's rights to due process are protected by the law enforcement
34 officer or agency's probable cause inquiry and by the opportunity to raise defenses
35 in the enforcement proceeding, as provided in subsection (c). If, for example, the
36 respondent was not provided with reasonable notice and opportunity to be heard by
37 the tribunal of the State issuing the protective order, the enforcing tribunal shall not
38 enforce the order. Thus, the interstate enforcement of a valid foreign protective
39 order, even without a prior hearing, does not deprive the respondent of any rights to

1 due process because the respondent was provided with reasonable notice and
2 opportunity to be heard when the order was issued.

3 The enforcement mechanisms established by the Act do not require the
4 presentation by the petitioner of an authenticated copy of the foreign protective
5 order. While States, as required by the Constitution and federal statutory law,
6 including 28 U.S.C. Sec. 1738, must accord properly authenticated foreign
7 judgments full faith and credit enforcement, they may choose to provide full faith
8 and credit to foreign orders they would not be required to enforce under the
9 provisions of the Constitution or other federal law. By adopting this Act, States
10 have chosen to give that extra measure of full and faith credit to foreign protective
11 orders.

12 Subsection (e) provides that if a law enforcement officer or agency discovers
13 in the course of a probable cause investigation that the respondent has not been
14 notified of the issuance of or served with an otherwise valid foreign protective, the
15 officer or agency should then notify the respondent of the terms and conditions of
16 the protective order and make a reasonable effort to serve the respondent with the
17 order. Once served, the respondent must obey the protective order.

18 Subsection (f) makes clear that, if a State adopts either its own process for
19 the registration or filing of foreign protective orders or adopts the process provided
20 in Section 3, the State shall not require the registration or filing of a foreign
21 protective order for enforcement.

22 **[SECTION 3. REGISTRATION OF ORDERS.]**

23 (a) A protected individual, or someone acting the individual's behalf, may
24 register a foreign protective order with this State. To register a foreign protective
25 order for enforcement by the tribunals of this State, a protected individual shall:

26 (1) present a copy of the order to the state agency responsible for the
27 registration of such orders; or

28 (2) present a copy of the foreign protective order to any law enforcement
29 officer or agency in the State and request that the order be registered with the
30 agency responsible for the registration of such orders.

1 (b) Upon receipt of a protective order, the responsible agency shall register
2 the order in accordance this section. After the order is registered, the responsible
3 agency shall provide the petitioner a certified copy of the registered order.

4 (c) The agency of this State responsible for the registration of foreign
5 protective orders shall register a valid foreign protective order for enforcement.
6 Presentation of a certified or true copy of a foreign protective order is not required
7 as a condition for registration under this [Act], unless a conflicting certified copy is
8 presented by the respondent or the individual against whom enforcement is sought.
9 With the permission of the petitioner, the agency of this State responsible for the
10 registration of foreign protective orders may communicate with the appropriate
11 agency of the issuing State to determine whether a particular order was issued
12 against and served upon the respondent.

13 (d) A protected individual may demonstrate that a foreign protective order
14 is valid by filing an affidavit that, to the best of that individual's knowledge, the
15 order is valid.

16 (e) All foreign protective orders registered under this [Act] must be entered
17 in any existing state or federal registries of protective orders.

18 [(f) A fee may not be charged for the registration of a foreign protective
19 order.]]

20 **Reporter's Notes**

21 This section is bracketed because States may prefer to use their existing
22 systems of registration to register foreign protective orders. While a protected
23 individual is not required to register a valid foreign protective order in order for it be
24 enforced, it is highly desirable that States provide an optional registration process.

1 A registration system supplies law enforcement officers and agencies more accurate
2 information, more quickly, about both the existence and status of foreign protective
3 orders and their terms and conditions. An enforcing State may facilitate the
4 collection and dissemination of this information either by establishing a central
5 registry or by providing a process by which information regarding registered orders
6 is distributed to law enforcement officers and agencies across the State. In
7 implementing a registration system, however, enforcing States should strongly
8 consider keeping these protective orders under seal. The purpose of more
9 effectively protecting victims of domestic violence will be undermined if respondents
10 can use the process of registration to locate the very people who are trying to
11 escape from them.

12 If an order is registered under this section, the petitioner is expected to
13 inform the enforcing State of any modifications to the registered protective order.

14 Subsection (f) is bracketed because some States may wish to charge a fee for
15 registration.

16 **SECTION 4. CROSS-PETITION OR COUNTER PETITION.** A foreign
17 protective order issued against a protected individual seeking enforcement of a
18 protective order under this [Act] is not entitled to full faith and credit unless:

19 (1) the respondent filed a cross-petition or counter petition, complaint, or
20 other written pleading seeking a protective order; and

21 (2) the issuing tribunal made specific findings against both the petitioner and
22 the respondent.

23 **Reporter's Notes**

24 This section, adapted from the federal Violence Against Women Act, 18
25 U.S.C. Sec. 2265(c), addresses foreign protective orders issued against both the
26 petitioner and the respondent. Such a foreign protective order will not be enforced
27 against a protected individual when the respondent did not file a cross-petition,
28 counter petition, complaint, or any other written pleading seeking a protective
29 order. If a respondent can prove that he or she made a specific request for relief and
30 that the issuing tribunal made specific findings that the respondent was entitled to
31 the requested relief, the protective orders will be enforced against the petitioner, in
32 the same manner as against the respondent.

1 arising under them. In addition to these statutory remedies, other remedies, such as
2 tort actions and criminal prosecution, are left undisturbed by this Act.

3 **SECTION 7. EFFECTIVE DATE.** This [Act] takes effect on

4 _____ .