

D R A F T

FOR DISCUSSION ONLY

# **RECOGNITION AND ENFORCEMENT OF CANADIAN DOMESTIC VIOLENCE PROTECTION ORDERS ACT**

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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November 21-22, 2014 Drafting Committee Meeting

*With Prefatory Note and Comments*

*REDLINE DRAFT*

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November 6, 2014

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**RECOGNITION AND ENFORCEMENT OF CANADIAN DOMESTIC VIOLENCE  
PROTECTION ORDERS ACT**

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# 1       **RECOGNITION AND ENFORCEMENT OF CANADIAN DOMESTIC VIOLENCE** 2       **PROTECTION ORDERS ACT**

## 3 4       **Prefatory Note**

5  
6       The Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act  
7 (“the act”) provides for the enforcement of domestic violence protection orders issued by  
8 Canadian courts. Reflecting the friendship between the United States and Canada, citizens move  
9 freely between the two countries, freedom that in certain limited circumstances can work against  
10 victims of domestic violence. Canada has granted recognition to protection orders of the United  
11 States and other countries in the Uniform Enforcement of Canadian Judgments and Decrees Act  
12 (UECJDA). By this act, enacting states accord similar recognition to protection orders from  
13 Canada.

14  
15       Both the UECJDA and this act are part of state, federal, and international efforts to  
16 recognize domestic violence protection orders across jurisdictions. The United States has been a  
17 part of these efforts since 1994 with the enactment of the Violence Against Women Act, or  
18 VAWA,<sup>1</sup> in which Congress required states to grant full faith and credit to the protection orders  
19 of other states.<sup>2</sup> Many states enacted legislation recognizing the domestic violence orders of  
20 sister states,<sup>3</sup> and in 2000, the Uniform Law Commission (ULC) approved the Uniform Interstate  
21 Enforcement of Domestic-Violence Protection Orders Act (UIEDVPOA), encouraging states to  
22 recognize and enforce the domestic violence orders of other states.<sup>4</sup> In 2011, the Uniform Law  
23 Conference of Canada (ULCC) approved the UECJDA, which provides for the recognition of  
24 foreign protection orders – including those of the United States – unless the foreign state of  
25 origin has been expressly excluded from the provisions of the act.

26  
27       The Hague Conference on Private International Law is also studying the recognition of  
28 domestic violence protection orders across jurisdictions. In March, 2012, the Conference issued  
29 the *Recognition and Enforcement of Foreign Civil Protection Orders: A Preliminary Note*.  
30 Through case studies based on actual incidents, the work illustrates the problems and dangers  
31 created in a world without cross-border recognition of domestic violence protection orders. The  
32 note also summarizes national protection order regimes and describes proposed and existing  
33 models of cross-border recognition, including VAWA, the UIEDVPOA, and the UECJDA. The  
34 Conference has released the responses to its *Questionnaire on the Recognition of Foreign Civil*  
35 *Protection Orders* in a *Summary of Member Responses and Possible Ways Forward*.

36  
37       The Hague Conference on Private International Law continues to study the advisability of  
38 drafting a convention on cross-jurisdictional recognition of domestic violence protection orders.  
39 In the meantime, this act takes a step towards recognition and enforcement of protection orders  
40 from other countries by providing for the recognition and enforcement of Canadian domestic

---

<sup>1</sup> Pub. L. No. 103-322, 108 Stat. 1902-55 (codified at various Sections of 8 U.S.C., 18 U.S.C. and 42 U.S.C.).

<sup>2</sup> 18 U.S.C § 2265.

<sup>3</sup> For a discussion of the various features of these statutes, see E. Sack, *Domestic Violence Across State Lines: The Full Faith and Credit Clause, Congressional Power, and the Interstate Enforcement of Protection Orders*, 98 Northwestern U. L. Rev. 827, 841-45 (Spring 2004).

<sup>4</sup> Unif. Interstate Enforcement of Domestic Violence Prot. Orders Act (amended 2002), 9 U.L.A. 28 (Supp. 2003) [hereinafter UIEDVPOA].

1 violence protection orders.

2  
3 This act draws from the UIEDVPOA and the UECJDA in its recognition and  
4 enforcement of Canadian domestic violence protection orders. The two Acts are similar in  
5 several important respects. Both recognize domestic violence protection orders without  
6 requiring that the party seeking enforcement register the foreign order. Likewise, both provide  
7 that a law enforcement agency or court respect a facially valid order until successfully  
8 challenged after the request for emergency relief-action has passed.

9  
10 The UIEDVPOA and UECJDA differ in other respects, with the UECJDA providing  
11 more narrow recognition and enforcement of protection orders from other countries than the  
12 UIEDVPOA provides for orders from sister states. The more limited goal of the UECJDA  
13 explains its more limited approach. The UECJDA seeks merely to separate temporarily an  
14 individual at risk from another individual to avoid “the possibility of violence arising from a  
15 failure to act...”<sup>5</sup> In other words, the UECJDA focuses only on the emergency presented by the  
16 threat of violence from an individual who has been ordered to stay away from the individual who  
17 is now the subject of the threat. The UECJDA seeks to empower law enforcement in that  
18 emergency to take “cautious preventive action” that may be challenged by the parties “if  
19 subsequently viewed as inappropriate or inaccurate by either party.”<sup>6</sup>

20  
21 Because the UECJDA focuses on emergencies in which one party threatens violence to  
22 the other party, it recognizes and enforces only those parts of a foreign order that deal with

23  
24 (a) being in physical proximity to a specified person or following a specified person  
25 from place to place;

26 (b) contacting or communicating with, either directly or indirectly, a specified person;

27 (c) attending at or with a certain distance of a specified place or location; or

28 (d) engaging in molesting, annoying, harassing, or threatening conduct directed at a  
29 specified person.<sup>7</sup>

30  
31 The UIEDVPOA, on the other hand, recognizes all parts of the sister state protection order,  
32 including parts of the order relating to custody and visitation.<sup>8</sup>

33  
34 This act follows the approach of the UECJDA, recognizing and enforcing only the parts  
35 of the Canadian protection order requiring no contact. Other Acts and conventions deal with  
36 issues of custody between countries, specifically, the UCCJEA and its 2013 amendments that  
37 implement the Hague Convention on the Protection of Children. This act, like the UECJDA,  
38 pursues the narrower goal of addressing the emergency of threatened violence.

39  
40 This act follows the UECJDA and its more limited approach also on other issues.  
41 Because of the limits on enforcing the criminal orders of another country, this act enforces only  
42 Canadian *civil* orders. While the UIEDVPOA’s definition of protection orders includes certain

---

<sup>5</sup> Unif. Enforcement of Canadian Decrees and Judgments Act, note [8], p. 3 [hereinafter UECJDA].

<sup>6</sup> *Id.*, note [6], p. 3.

<sup>7</sup> UECJDA, § 9.1.

<sup>8</sup> UIEDVPOA, Introduction. The UIEDVPOA does not enforce provisions related to support, however. *Id.*

1 criminal orders, such as anti-stalking orders, other sections of the UIEDVPOA recognize the  
2 problems inherent in enforcing the criminal law of a sister state.<sup>9</sup> The international setting only  
3 multiplies the issues; therefore, the act recognizes and enforces only Canadian civil protection  
4 orders.

5  
6 The act also limits recognition of Canadian protection orders to those orders that issue  
7 from courts. The UIEDVPOA recognizes protection orders issued not just by *courts*, but also by  
8 *tribunals*, including an “agency...or other entity authorized by law to issue or modify a  
9 protection order.”<sup>10</sup> Following the lead of the UECJDA, this act provides for narrower  
10 recognition, limiting the recognition of Canadian protection orders to civil orders issued by  
11 Canadian courts.<sup>11</sup>

12  
13 The act defines protection orders more broadly than the UIEDVPOA only in one way.  
14 The UIEDVPOA limits recognition to orders “issued... under the domestic-violence [or] family-  
15 violence, or anti-stalking laws” of the state that issued the order.<sup>12</sup> In this way, the act excludes  
16 orders that issue under more general statutes. The UECJDA has no such limitation, providing  
17 for the recognition of foreign protection orders “made by a court of a foreign state.”<sup>13</sup> The  
18 [Canadian](#) drafters concluded that specifying the type of statute authorizing the order was  
19 unnecessary in light of other limitations. Since this act recognizes and enforces only no-contact  
20 provisions in a civil order, further specificity seemed unnecessary and unwise. In light of the  
21 emergency setting in which enforcement questions arise, this complicated determination of  
22 Canadian statutory authority could defeat the purpose of the act.

23  
24 The act also provides uniform procedures for the cross-border enforcement of Canadian  
25 domestic violence protection orders. The act envisions that the enforcement of Canadian  
26 protection orders will require law enforcement officers of enforcing states to rely on probable  
27 cause judgments that a valid order exists and has been violated. The act, however, provides that  
28 if a protected individual can provide direct proof of the existence of a facially valid order, by, for  
29 example, presenting a paper copy or through an electronic registry, probable cause is  
30 conclusively established. If no such proof is forthcoming, the act requires enforcement if  
31 officers, relying on the totality of the circumstances, determine that there is probable cause to  
32 believe that a valid protection order exists and has been violated. The individual against whom  
33 the order is enforced will have sufficient opportunity to demonstrate that the order is invalid  
34 when the case is brought before the enforcing tribunal. Law enforcement officers, as well as  
35 other government agents, will be encouraged to rely on probable cause judgments by the act’s  
36 inclusion of an immunity provision, protecting agents of the government acting in good faith.

37  
38 The act does not require individuals seeking enforcement of a protection order to register  
39 or file the order with the enforcing state. It does, however, include an optional registration  
40 process. This process permits individuals to register a Canadian protection order by presenting a

---

<sup>9</sup> In another section, 3(a), the UIEDVPOA limits the enforcement of criminal provisions by requiring that a person (not just the state) have authority to seek enforcement of the protection order.

<sup>10</sup> UIEDVPOA, § 2 (8).

<sup>11</sup> UECJDA, § 9.1.

<sup>12</sup> UIEDVPOA, § 2 (5). For some of the criticism [of this provision](#), see Sacks, *supra* note 3, at p. 846.

<sup>13</sup> UECJDA, § 9.1.

1 copy of the order to a responsible state agency or any state officer or agency. The issuing  
2 Canadian court must certify the copy presented for registration. The purpose of these procedures  
3 is to make it as easy as possible for the protected individual to register the protection order and  
4 facilitate its enforcement.  
5

1       **RECOGNITION AND ENFORCEMENT OF CANADIAN DOMESTIC VIOLENCE**  
2                                   **PROTECTION ORDERS ACT**

3  
4       **SECTION 1. SHORT TITLE.** This [act] may be cited as the Recognition and  
5 Enforcement of Canadian Domestic Violence Protection Orders Act.

6       **SECTION 2. DEFINITIONS.** In this [act]:

7           (1) “Canadian protection order” means a judgment or part of a judgment, an injunction,  
8 or other order issued in a civil proceeding by a court of Canada under law of the issuing  
9 jurisdiction which prohibits an individual from:

10                   (A) being in physical proximity to a specified individual or following a specified  
11 individual;

12                   (B) contacting or communicating with, ~~either~~ directly or indirectly, ~~with~~ a  
13 specified individual;

14                   (C) being within a certain distance of a specified place or location; or

15                   (D) molesting, annoying, harassing, or engaging in threatening conduct directed at  
16 a specified individual.

17           (2) “Domestic protection order” means an injunction or other order issued by a tribunal to  
18 prevent an individual from engaging in violent or threatening acts against, harassment of, contact  
19 or communication with, or physical proximity to another individual.

20           (3) “Issuing court” means the Canadian court that issues a Canadian protection order.

21           (4) “Protected individual” means an individual protected by a Canadian protection order.

22           (5) “Record” means information that is inscribed on a tangible medium or that is stored  
23 in an electronic or other medium and is retrievable in perceivable form.

24           (6) “Respondent” means an individual against whom enforcement of a Canadian  
25 protection order is sought.



(7) “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 recognized by federal law or formally acknowledged by a state.

(8) “Tribunal” means a court, agency, or other entity of this state authorized by law to issue, ~~or~~ modify, register, or enforce a domestic protection order.

### Comment

In many ways, a Canadian protection order resembles a domestic protection order. The phrase includes an ex parte order that a judge might grant on behalf of the petitioning party and an order that a judge enters after notice to the defendant and a full hearing.

Likewise, while the Canadian protection order recognized and enforced by this act focuses on keeping the respondent from physically contacting the protected individual, it is not necessarily so limited. This act enforces the parts of a Canadian protection order that prohibit the respondent from “molesting, annoying, harassing, or engaging in threatening conduct directed at a specified individual.” The respondent might engage in threatening conduct against a third person or the property of the protected individual as a means of “molesting, annoying, or harassing” the protected individual. Under those circumstances, the Canadian protection order proscribes more than physical contact with the protected individual.

In other respects, the term “Canadian protection order,” at least as used in this act, is more limited than domestic protection orders. In the United States, protection order statutes ~~on protection orders~~ give the judge a wide range of options beyond ordering the defendant not to contact or harass the plaintiff. The domestic protection order may provide for custody of the minor children, direct the possession of any animal owned by either party, order possession of a vehicle to the petitioning party, require the defendant to make rent or mortgage payments, etc. See, e.g., New Jersey Statutes Annotated § 2C:25-29. In addition, because of federal legislation restricting possession of firearms by batterers, see 18 U.S.C. § 922(d)(8), domestic protection orders include provisions ordering the batterer not to possess firearms. N.J.S.A. §2C:25-29(b)(16).

As explained in the prefatory note, this act provides the first international recognition and enforcement of another country’s protection orders. The UECJDA recognizes only the no-contact provisions of United States domestic protection orders, and this act takes a similarly limited approach to the recognition and enforcement of Canadian protection orders. The party who seeks the recognition and enforcement of a Canadian protection order may later seek the more comprehensive provisions in a proceeding for a domestic protection order. ~~than the definition of “protection order” under the UIEDVPOA~~

Moreover, under the UIEDVPOA, “~~whose~~ protection orders” include a narrow category of orders in criminal proceedings.<sup>14</sup> ~~While this act limits Canadian protection orders to civil orders issued in civil proceedings.~~ By defining “tribunal” to include an entity authorized to enforce a Canadian protection order<sup>[P1]</sup>, however, the act recognizes that a tribunal may include a court that imposes a criminal penalty for violation of a Canadian protection order. ~~enforcement of a Canadian protection order might have criminal consequences.~~ Most states provide that the violation of a protection order is a misdemeanor. See, e.g., N.C. Gen. Stat. § 50B-4.1(a) (2013) (“Except as otherwise provided by law, a person who knowingly violates a valid protective order entered pursuant to this Chapter or who knowingly violates a valid protective order entered by the courts of another state or the courts of an Indian tribe shall be guilty of a Class A1 misdemeanor.”) The drafters of this act encourage states to provide similarly for violations of a Canadian protection order.

~~These consequences would likewise attach to violation of a Canadian protection order.~~ Also, a Canadian protection order includes an order modifying a previous order. A modified order, therefore, is enforceable under the act in the same manner as a newly issued order.

The terms “protected individual” and “respondent” refer to the relief sought by a party in the action brought in the enforcing state. The act recognizes that neither the protected individual nor the respondent may have been a named party in the action brought in the issuing court; the act applies to individuals meeting the definition of protected individual or respondent whether they were named in the caption or the body of the protection order. The “protected individual” may be a child, for example, for whose sake a parent is seeking to enforce the Canadian order. The act also recognizes that the parties may have been called by different terms, e.g. plaintiff, defendant, or petitioner, in the issuing court.

### SECTION 3. NONJUDICIAL ENFORCEMENT OF CANADIAN PROTECTION ORDER.

(a) ~~If a~~ A law enforcement officer of this state determines that there is, ~~on determination of~~ probable cause to believe that a valid Canadian protection order exists and that the order has been violated, the officer shall enforce the Canadian protection order as if it were an order of a tribunal.

(b) Presentation of a ~~copy of a~~ record of a Canadian protection order that identifies both the protected individual and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a valid Canadian protection order exists. ~~For the purposes of this~~

---

<sup>14</sup> UIEDVPOA, § 2 (5).

1 ~~section, the Canadian protection order may be inscribed on a record.~~ Presentation of a certified  
2 ~~copy record~~ of a Canadian protection order is not required for enforcement.

3 (c) If a Canadian protection order is not presented as provided in subsection (~~ba~~), a law  
4 enforcement officer of this state may consider other information in determining whether there is  
5 probable cause to believe that a valid Canadian protection order exists.

6 (d) If a law enforcement officer of this state determines that an otherwise valid Canadian  
7 protection order cannot be enforced because the respondent has not been notified or served with  
8 the order, the officer shall inform the protected individual of that fact and inform the protected  
9 individual that ~~the law enforcement officer is going to inform the respondent will be informed of~~  
10 the order. After notice to the protected individual, the law enforcement officer shall inform the  
11 respondent of the order, make a reasonable effort to serve a copy of the order on the respondent,  
12 and allow the respondent a reasonable opportunity to comply with the order before the officer  
13 enforces the order.

14 (e) Registration or filing in this state of a Canadian protection order is not required for its  
15 enforcement under this [act].

## 16 Comment

17  
18 This section implements the core purpose of the act. The enforcement procedures in  
19 subsections (a) and (b) rely on the sound exercise of the judgment of law enforcement officers to  
20 determine whether there exists probable cause to believe that a valid Canadian protection order  
21 exists and has been violated. These procedures anticipate that there will be many instances in  
22 which the protected individual does not have, or cannot, under the circumstances, produce a  
23 paper copy of the Canadian protection order.  
24

25 Subsection (~~ba~~) establishes a per se rule for determining probable cause of the existence  
26 of an order. If the protected individual presents proof of a facially valid order, the order should  
27 be enforced. The protected individual may provide this proof with a paper copy of a Canadian  
28 protection order (which need not be certified) ~~of a Canadian protection order~~ or through an  
29 electronic medium, such as a registry of Canadian protection orders. In determining whether  
30 there is proof of a facially valid order, a law enforcement officer should search a registry of  
31 orders, if possible, using an electronic or other medium.

1  
2 This section applies with equal force to orders written in a language other than English.  
3 As of this date, the province of Quebec does not issue protection orders. Conversation with  
4 Darcy McGovern, Member, Uniform Law Conference of Canada, March 21, 2014. For this  
5 reason, there may be few Canadian protection orders in a language other than English.  
6

7 Subsection (~~cb~~) concerns the situation in which the protected individual cannot present  
8 direct proof of the Canadian protection order. In this situation, law enforcement officers are  
9 expected to obtain information from all available sources, including interviewing the parties and  
10 contacting other law enforcement agencies, to determine whether a valid protection order is in  
11 effect. If the officer finds, after considering the totality of the circumstances, that there is  
12 probable cause to believe that a valid Canadian protection order exists and has been violated, he  
13 or she should enforce the order. This probable cause determination must meet the constitutional  
14 standards for determining probable cause. If it is later determined that no such order was in  
15 place or the order was otherwise unenforceable, Section 6 protects law enforcement agencies,  
16 officers, or other state officials for actions taken in good faith.  
17

18 Subsection (~~de~~) provides that if a law enforcement officer discovers in the course of a  
19 probable cause investigation that the respondent has not been notified of the issuance of or  
20 served with an otherwise valid Canadian protection order, the officer must ~~then~~ inform the  
21 respondent of the terms and conditions of the protection order and make a reasonable effort to  
22 serve the order upon the respondent. The respondent must be allowed a reasonable opportunity  
23 to comply with the order before the order is enforced.  
24

25 Subsection (~~ed~~) makes clear that if a state either adopts its own process for the  
26 registration or filing of Canadian protection orders or adopts the process provided in Section 5,  
27 the state may not require the registration or filing of a Canadian protection order for  
28 enforcement.  
29

## 30 SECTION 4. JUDICIAL ENFORCEMENT OF CANADIAN PROTECTION

### 31 ORDER.

32 (a) ~~(a)~~ In this section, “mutual Canadian protection order” means a Canadian  
33 protection  
34 order that includes provisions protecting both the individual seeking recognition or enforcement  
35 -of the order and the respondent.  
36  
37

38  
39 (b) A tribunal ~~of this state~~ may enforce provisions of a mutual Canadian protection  
40 order that

41  
42 protect a respondent only if:         
43

44 (1) the respondent filed a pleading seeking a protection order from the issuing

1 court; and

2 (2) the issuing court made specific findings that entitled the respondent to the  
3 issuance of a Canadian protection order.

4 ~~(cb)~~ A tribunal may issue an order enforcing a valid Canadian protection order on  
5 application of a person authorized by law of this state other than this [act] to seek enforcement of  
6 a domestic protection order.

7 ~~(de)~~ In a proceeding to enforce a Canadian protection order, the tribunal shall follow the  
8 procedures of this state for the enforcement of a domestic protection order.

9 ~~(ed)~~ A Canadian protection order is valid if it:

10 (1) identifies a protected individual and a respondent;

11 (2) is currently in effect;

12 (3) was issued by a court that had jurisdiction over the parties and subject matter  
13 under law of the issuing court's jurisdiction; and was issued after

14 (A) ~~was issued after~~ the respondent was given reasonable notice and had  
15 an opportunity to be heard before the court issued the order; or

16 (B) in the case of an ex parte order, the ~~-~~respondent was given notice and  
17 had or will have an opportunity to be heard within a reasonable time after the order was issued,  
18 in a manner consistent with the right of the respondent to due process.

19 ~~(fe)~~ A Canadian protection order valid on its face is prima facie evidence of its validity.

20 ~~(gf)~~ Absence of any of the criteria under subsection ~~(ed)~~ for validity of a Canadian  
21 protection order is an affirmative defense in an action seeking enforcement of the order.

## 22 Comment

23  
24 Subsections (a) and (b), adapted from the Violence Against Women Act, 18 U.S.C. Sec.  
25 2265(c), address the enforcement of Canadian mutual protection orders that contain provisions

1 protecting both the protected individual and the respondent. Provisions of a Canadian mutual  
2 protection order issued in favor of the respondent will not be enforced without proof that the  
3 respondent filed a written pleading seeking a protection order. If a respondent can prove that the  
4 respondent made a specific request for relief and that the issuing court made specific findings  
5 that the respondent was entitled to the requested relief, the protection orders may be enforced  
6 against the protected individual.

7  
8 Subsection (ca) ~~implements the core purpose of the act addresses judicial enforcement of~~  
9 ~~provisions in Canadian protection orders dealing with no contact. Effective cross border~~  
10 ~~enforcement of protection orders is founded on the principle that enforcing states must enforce~~  
11 ~~the substantive terms of a Canadian protection order dealing with no contact.~~ In limited  
12 circumstances, the tribunals of enforcing states must enforce the specific terms of a Canadian  
13 protection order even if their law would not allow the relief in question. For example, if the law  
14 of the issuing court allows protection orders to remain effective for a longer period than is  
15 allowed by the enforcing state, the tribunal of the enforcing state should enforce the order for the  
16 time specified in the order of the issuing court. In a proceeding to enforce the substantive terms  
17 of the Canadian protection order, however, the tribunal of the enforcing state shall follow its own  
18 procedures.

19  
20 Subsection (ca<sup>[P31]</sup>) also provides that any person authorized by the law of the enforcing  
21 state to seek enforcement of a domestic protection order may seek enforcement of a valid  
22 Canadian protection order in the enforcing state. This provision recognizes that states frequently  
23 authorize public agencies and officers, such as a local prosecutor, to bring enforcement actions  
24 on behalf of a protected individual. The act, however, in recognizing the importance of these  
25 agencies and officers, should not be interpreted to mean that states, and their agencies and  
26 officers, are required to bring these actions when possible.

27  
28 Subsection (eb) requires that, to be valid for the purpose of enforcement under this act, a  
29 Canadian protection order must be “currently in effect.” This provision includes orders that have  
30 been modified; the modified order is the order currently in effect. While the act requires that a  
31 Canadian protection order, to be valid, identify the protected individual and respondent, merely  
32 technical errors, such as an incorrect spelling of a name, should not preclude enforcement of the  
33 order. The question of the validity of an order is a question of law for the court of the enforcing  
34 state. Once an order is adjudged valid, the proceeding shall be governed by the established  
35 procedures of the enforcing state.

36  
37 The respondent’s constitutional right to due process is protected by the opportunity to  
38 raise defenses in the enforcement proceeding, as provided in subsection (eb)(34). If, for  
39 example, the respondent was not provided with reasonable notice and opportunity to be heard by  
40 the court that issued the protection order, the enforcing tribunal may not enforce the order. Thus,  
41 the cross-border enforcement of a valid Canadian protection order, even without a prior hearing,  
42 does not deprive the respondent of any rights to due process because the respondent was  
43 provided with reasonable notice and opportunity to be heard when the order was issued.

44  
45 The enforcement mechanisms established by the act do not require the presentation by  
46 the protected individual of an authenticated copy of the Canadian protection order. By enacting

1 this act, states have chosen to recognize and enforce Canadian protection orders.

2  
3 ~~Subsection (e), adapted from the Violence Against Women Act, 18 U.S.C. Sec. 2265(e),~~  
4 ~~addresses the enforcement of Canadian mutual protection orders that contain provisions~~  
5 ~~protecting both the protected individual and the respondent. Provisions of a Canadian mutual~~  
6 ~~protection order issued in favor of the respondent will not be enforced without proof that the~~  
7 ~~respondent filed a written pleading seeking a protection order. If a respondent can prove that the~~  
8 ~~respondent made a specific request for relief and that the issuing tribunal made specific findings~~  
9 ~~that the respondent was entitled to the requested relief, the protection orders may be enforced~~  
10 ~~against the protected individual.~~

11  
12 **[SECTION 5. REGISTRATION OF CANADIAN PROTECTION ORDER.]**

13 (a) An individual may register a Canadian protection order in this state. To register a  
14 Canadian protection order, the individual must present a certified copy of the Canadian  
15 protection order to[:]

16 [(1) ~~fa tribunal~~state agency responsible for the registration of domestic protection  
17 orders]; or]

18 [(2)] [an agency designated by the state], which shall present the Canadian  
19 protection order to [the ~~agency~~tribunal responsible for the registration of domestic protection  
20 orders].

21 (b) On receipt of a Canadian protection order, the [~~agency~~tribunal responsible for the  
22 registration of domestic protection orders] shall register the order in accordance with this section.  
23 After the Canadian protection order is registered, the [responsible ~~agency~~tribunal] shall provide  
24 to the individual registering the Canadian protection order a certified copy of the registered  
25 Canadian protection order.

26 (c) The ~~agency~~tribunal responsible for the registration of the Canadian protection order]  
27 shall correct or remove a registered Canadian protection order in accordance with law of this  
28 state other than this [act].

29 (d) An individual registering a Canadian protection order shall file an affidavit of the



protected individual stating that, to the best of the protected individual's knowledge, the order is currently in effect.

(e) A Canadian protection order registered under this [act] may be entered in a state or federal registry of protection orders in accordance with applicable law.

(f) A fee may not be charged for the registration of a Canadian protection order.]

**Legislative Note:** *This section is bracketed because a state may prefer to use its existing systems of registration to register Canadian protection orders. While enforcement of a Canadian protective order does not require registration, it is highly desirable that a state provides an optional registration process. A registration system supplies law enforcement officers and agencies more accurate information, more quickly, about both the existence and status of Canadian protection orders and their terms and conditions. An enforcing state may facilitate the collection and dissemination of this information either by establishing a central registry or by providing a process by which information regarding registered orders is distributed to law enforcement officers and agencies across the state.*

While ~~state~~ law of this state other than this [act] governs management of state registries, an enforcing states should strongly consider keeping these protection orders under seal when implementing a registration system. The purpose of more effectively protecting victims of domestic violence will be undermined if respondents can use the process of registration to locate the very people who are trying to escape from them. In addition, the Violence Against Women Act prohibits states that provide for the registration or filing of orders from notifying other states of the registration or filing of the order without the permission of the individual registering or filing the order. 18 U.S.C. § 2265(d).

### Comment

Subsection (a) provides that any individual, including a potential respondent, may register Canadian protection orders. ~~In this way, the provision tries to ensure that all parties have the opportunity to provide relevant information to the state. Orders, for example, may be modified with custody arrangements.~~ Subsection (a) also requires that a person seeking to register a Canadian protection order must present a certified copy of that order. The copy must be a writing on paper, thus exempting this requirement from the provisions of the Uniform Electronic Transactions Act.

Subsection (c) provides that if the state has registered orders that are no longer in effect or are inaccurate, these orders must be removed from the registry or, in the case of error, corrected. Each government's law regarding the management of records governs the precise method of how state and federal registries manage their registries, including the deletion of inaccurate information.

[Add comments for subsections (b), (d), (e), and (f).]



**SECTION 6. IMMUNITY.** This state or a state agency, local governmental agency, law enforcement officer, prosecuting attorney, clerk of court, or state or local governmental official acting in an official capacity is immune from civil and criminal liability for an act or omission arising out of the [registration or] enforcement of a Canadian protection order or the detention or arrest of an alleged violator of a Canadian protection order if the act or omission was a good faith effort to comply with this [act].

### Comment

This section grants immunity from criminal or civil liability to states, state and local governmental agencies, and all state and local government officials acting in their official capacity for acts or omissions done in good faith in an effort to comply with the provisions of this act. Immunity for the enforcement of Canadian protection orders does not preclude state and local governments from using personnel and other internal sanctions in order to prevent and punish actions that, in the absence of this immunity provision, would have rendered the government agencies, officers, or officials civilly or criminally liable. Also, a state may, if it wishes, substitute its own immunity provisions, so long as law enforcement officers, agencies, or other officials involved in the registration or enforcement of Canadian protection orders, under the immunity scheme chosen, are not dissuaded from enforcing such orders because of the fear of potential liability.

**SECTION 7. OTHER REMEDIES.** A protected individual who pursues remedies under this [act] is not precluded from pursuing other legal or equitable remedies against the respondent.

### Comment

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.

**SECTION 8. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

## SECTION 9. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND

1 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic  
2 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not  
3 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize  
4 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.  
5 Section 7003(b).

6 **SECTION 10. APPLICATION.** This [act] applies to a Canadian protection order  
7 issued before or after [the effective date of this [act]] and to a continuing action for enforcement  
8 of a Canadian protection order commenced before or after [the effective date of this [act]]. A  
9 request for enforcement of a Canadian protection order made on or after [the effective date of  
10 this [act]] for a violation of a Canadian protection order occurring before or after [the effective  
11 date of this [act]] is governed by this [act].

#### 12 **Comment**

13 The provisions of this act apply to all requests for enforcement of Canadian protection  
14 orders, both continuing and newly filed, made on or after its effective date. In addition, the  
15 provisions of this act apply to the enforcement of Canadian protection orders issued before the  
16 effective date of this act and to requests for enforcement of Canadian protection orders in which  
17 the alleged violation took place before the effective date of the act.

18  
19 **[SECTION 11. SEVERABILITY CLAUSE.** If any provision of this [act] or its  
20 application to a person or circumstance is held invalid, the invalidity does not affect other  
21 provisions or applications of this [act] which can be given effect without the invalid provision or  
22 application, and to this end the provisions of this [act] are severable.]

#### 23 **Comment**

24  
25 One of main purposes of this [act] is to provide a mechanism for the cross-border  
26 enforcement of Canadian protection orders that does not rely on any federal mandate. By  
27 enacting this [act], ~~a states are~~ is exercising ~~its~~their independent authority to recognize and  
28 enforce Canadian orders that the statey would not otherwise be required to enforce under the  
29 Constitution.  
30

1        **[SECTION 12. REPEALS; CONFORMING AMENDMENTS.**

2        (a) . . . .

3        (b) . . . .

4        (c) . . . .]

5        **SECTION 13. EFFECTIVE DATE.** This [act] takes effect on....