

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 Reporter's Notes

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

3 **SECTION 1. DEFINITIONS**

4 In this [Act]:

5 (1) “Enforcing State” means the State that is enforcing a foreign protection order.

6 (2) “Foreign protection order” means a protection order issued by another state.

7 (3) “Issuing State ” means the State that issued the protection order.

8 (4) “Protected person” means any individual or individuals who are protected by a
9 protection order.

10 (5) “Protection order” means any injunction or other order issued for the purpose
11 of preventing violent or threatening acts or harassment against, or contact or
12 communication with or physical proximity to another person. These orders, excluding
13 support and custody orders, include temporary and final orders issued by civil and criminal
14 courts, regardless of whether the order was obtained by filing an independent action or a
15 pendente lite order in another proceeding so long as any civil order was issued in response
16 to a complaint, petition or motion filed by or on behalf of a person seeking protection.

17 (6) “State” means a State of the United States, the District of Columbia, Puerto
18 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
19 jurisdiction of the United States. The term “State” includes a tribe.

20 (7) “Tribe” means an Indian tribe or band, or Alaskan Native village, which is
21 recognized by federal law or formally acknowledged by a State.

22 (8) “Tribunal” means any entity authorized by the law of a State to issue, modify,

1 or enforce protection orders.

2 COMMENTS

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

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

19 In addition, the term “protection order” includes an order modifying a previous
20 order. Thus, a modified order, is enforced, under the Act, in the same manner as a newly
21 issued order.

22 Tribes are included in the definition of “state” because the Violence Against
23 Women Act requires that states accord tribal protection orders full faith and credit.
24 These orders, however, must satisfy the same criteria of validity, as defined in Section 2,
25 in order to qualify for enforcement.

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

29 SECTION 2. ENFORCEMENT OF ORDERS

30 (a) A valid foreign protection order shall be accorded full faith and credit by the
31 tribunals of this State. The tribunals of this State must enforce the terms of a valid foreign
32 protection order as if the order was issued by this State. The valid foreign protection

1 orders entitled to full faith and credit include those orders that were issued before the
2 effective date of this [Act].

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

4 (1) states the name of both the protected persons and the persons
5 against whom enforcement is sought;

6 (2) is not expired;

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

9 (4) was issued on the condition that the respondent was provided
10 with reasonable notice and the opportunity to be heard before the issuing tribunal rendered
11 the order, or, in the case of ex parte orders, the respondent was granted such notice and
12 opportunity to be heard in a reasonable time after the issuing of the order, consistent with
13 the protection of the due process rights of the respondent.

14 (c) Proof that the foreign protection order lacked any one of the indicia of validity
15 described in subsection (b) shall be an affirmative defense to any action seeking
16 enforcement of a foreign protection order.

17 (d) Any law enforcement officer or agency of this State, upon determining that
18 there is probable cause that a valid foreign protection order has been violated, shall
19 enforce the provisions of that order as if it were the order of this State. In determining
20 whether there is probable cause that a valid foreign protection order has been violated, a
21 law enforcement officer or agency may rely upon:

22 (1) a copy of the foreign protection order. Such an order, if valid on its

1 face, shall be presumed to be valid;

2 (2) verbal statements by the petitioner or respondent;

3 (3) information obtained from any state or federal registries of protection
4 orders or through communication with law enforcement officers, agencies or tribunals; or

5 (4) any other source of information relevant to the determination of
6 whether there is probable cause that a valid foreign protection order has been violated.

7 (e) If a law enforcement officer or agency of this State determines that an
8 otherwise valid foreign protection order cannot be enforced because the respondent has
9 not been notified or served with the foreign protection order, the officer or agency shall
10 notify the respondent of the terms and conditions of the order and, when possible, serve
11 the order upon the respondent.

12 (f) Registration of orders with the enforcing State is not required for the
13 enforcement of valid foreign protection orders pursuant to this [Act.]

14 COMMENTS

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

23 In order to facilitate the interstate enforcement of foreign protection orders, states
24 should strongly consider requiring tribunals that issue protection orders to clearly state
25 that these orders are entitled to full faith and credit under both federal and state law and,
26 thus, will be enforced in other states. In addition, states [may wish to] [should] adopt [a]
27 [the attached] standard certification form stating the protection order issued by their
28 tribunals satisfies the criteria of validity articulated in subsection (b), thus qualifying the

1 protection order for interstate enforcement.

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

9 The enforcement procedures in subsection (d) rely on the sound exercise of the
10 judgment of law enforcement officers and agencies as to whether or not there exists
11 probable cause that a valid foreign protection order has been violated. These procedures
12 anticipate that there will be many instances in which the protected person does not have,
13 or cannot, under the circumstances, obtain a certified copy of the foreign protection order.
14 In these instances, law enforcement officers and agencies are expected, after assuming
15 control over the parties, to obtain information from all available sources, including the
16 statements of the parties and contact with other law enforcement agencies, as well as
17 examining copies of any orders, to learn if there is a valid protection order in effect. If the
18 officer or agency finds, after considering the totality of the circumstances, that there is
19 probable cause that a valid foreign protection order has been violated, he or she should
20 arrest the respondent. If it is later found out that no such order was in place, law
21 enforcement officers, agencies, or other state officials will be protected by the immunity
22 provision of Section 5 for their good faith actions in these cases. .

23 The respondent's rights to due process are protected by the law enforcement
24 officer or agency's probable cause inquiry into the validity of the order and by the
25 opportunity to raise defenses to the enforcement of the order by tribunals of the enforcing
26 state, as provided in subsection (c). If, for example, the respondent was not provided with
27 reasonable notice and opportunity to be heard by the tribunal of the state issuing the
28 protection order, the enforcing tribunal shall not enforce the order. The enforcement of a
29 valid foreign protection order, even without a prior hearing, does not, however, deprive
30 the respondent of any rights to due process because the according of full and faith and
31 credit to a valid order does not deprive the respondent of any rights beyond those already
32 protected by the issuing tribunal.

33 The enforcement mechanisms established by the Act do not require the
34 presentation by the petitioner of an authenticated copy of the foreign protection order.
35 While states, as required by the Constitution and federal statutory law, must accord
36 properly authenticated foreign judgments full faith and credit enforcement, they may
37 choose to provide full faith and credit to foreign orders they would not be required to
38 enforce under the provisions of the Constitution or other federal law. By adopting this
39 Act, states have chosen to give that extra measure of full and faith credit to foreign

1 protection orders.

2 Subsection (e) provides that if a law enforcement officer or agency discovers in the
3 course of a probable cause investigation that the respondent has not been notified of the
4 issuance of or served with an otherwise valid foreign protection, the officer or agency
5 should then notify the respondent of the terms and conditions of the protection order and,
6 if possible, serve the respondent with the order. The respondent, at that point, should be
7 given the opportunity to depart the scene and obey the terms of the protection order.

8 Subsection (f) makes certain that, if a state adopts either its own process for the
9 registration of foreign protection orders or the adopts the process provided in Section 3,
10 the state does not mandate the registration of foreign protection orders before it will
11 enforce these orders.

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

13 (a) A protected person, or someone acting on his or her behalf, may register a
14 foreign protection order with this State. In order to register a foreign protection order for
15 enforcement by the tribunals of this State, a protected person, or someone acting or his or
16 her behalf, may either:

17 (1) present a copy of the foreign protection order to the State agency
18 responsible for the registration of such orders; or

19 (2) present a copy of the foreign protection order to any law enforcement
20 officer or agency in the State and request that the order be registered with the agency
21 responsible for the registration of such orders. Once in receipt of the foreign order, the
22 responsible agency shall register the order in accordance with the provisions of this
23 section. After the order is registered, the responsible agency shall provide the petitioner a
24 certified copy of the registered order.

25 (b) The agency of this State responsible for the registration of such orders shall

1 register a foreign protection order for enforcement if the order presented is valid.
2 Presentation of a certified or true copy of the foreign protection order shall not be
3 required as a condition for registration under this Act, provided that a conflicting certified
4 copy is not presented by the respondent or the individual against whom enforcement is
5 sought. With the permission of the petitioner, the agency of this State responsible for the
6 registration of orders may contact the appropriate agency of the issuing State to determine
7 if the foreign protection order was issued against and served upon the respondent.

8 (c) A protected person may demonstrate a foreign protection order is valid by
9 filing an affidavit swearing, to the best of that person's knowledge, that the order is valid.

10 (d) All foreign protection orders registered under this [Act] shall be entered in any
11 existing state or federal registries of protection orders.

12 [(e) No fee or cost shall be charged for the registration of foreign protection orders
13 pursuant to the provisions of this section.]]

14 COMMENTS

15 This section is bracketed because states may prefer to use their existing systems of
16 registration to register foreign protection orders. While a protected person is not required
17 to register a valid foreign protection order in order for it be enforced, it is highly desirable
18 that states provide a registration option. A registration system supplies law enforcement
19 officers and agencies more accurate information, more quickly, about both the existence of
20 valid foreign protection orders and their terms and conditions. More readily available and
21 more complete information encourages law enforcement officers and agencies to enforce
22 foreign protection orders. An enforcing state may facilitate the spread of this information
23 by either establishing a central registry or by providing a process by which information
24 regarding registered orders is distributed to law enforcement officers and agencies across
25 the state. In implementing a registration system, however, enforcing states should
26 strongly consider keeping these protection orders under seal. The purpose of more
27 effectively protecting victims of domestic violence will be undermined if respondents can
28 use the process of interstate enforcement to locate the very people who are trying to

1 escape from them.

2 Once an order is registered under this Section, the petitioner is expected to inform
3 the tribunals of the enforcing state of any modifications to the registered protection order.

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

6 **SECTION 4. CROSS OR COUNTER PETITION**

7 A foreign protection order issued against a protected person seeking enforcement
8 of a protection order under this [Act] is not entitled to full faith and credit unless:

9 (1) the respondent filed a cross or counter petition, complaint, or other written
10 pleading seeking such a protection order; and

11 (2) the issuing tribunal made specific findings against both the petitioner and the
12 respondent.

13 **COMMENTS**

14 This section, adapted from the federal Violence Against Women Act, 18 U.S.C.
15 Sec. 2265(c), denies interstate enforcement to foreign protection orders issued against a
16 protected person which, in boilerplate fashion, without any specific complaints by or
17 findings in favor of the respondent, apply to both the petitioner and the respondent. If a
18 respondent can prove that he or she made a specific request for relief and that the issuing
19 tribunal made findings in granting that request, the protection orders will be enforced in
20 the same manner as other protection orders.

21 **SECTION 5. IMMUNITY**

22 A law enforcement officer, law enforcement agency, prosecuting attorney, or clerk
23 of court is immune from civil and criminal liability for his or her acts or omissions arising
24 out of a decision related to the registration of a foreign protection order or to the
25 detention or arrest of an alleged violator of a foreign protection order if the act or

1 omission is done in a good faith effort to comply with the provisions of this [Act].

2 COMMENTS

3 States may, if they wish, substitute their own immunity provisions, so long as law
4 enforcement officers, agencies, or other officials involved in the enforcement of foreign
5 protection orders, under the immunity scheme chosen, are not dissuaded from enforcing
6 such orders because of the fear of potential liability.

7 SECTION 6. OTHER REMEDIES

8 Pursuit of the remedies provided in this [Act] does not preclude the petitioner
9 from pursuing other legal or equitable remedies against the respondent.

10 COMMENTS

11 This section clarifies that the protection orders enforced under the Act are not the
12 only means of protection available to victims of domestic violence. Custody orders, for
13 example, are often used to provide protection for victims of domestic violence.
14 Petitioners are entitled to, and should, use the remedies available under statutes such as
15 the Uniform Child Custody Jurisdiction Act, the Uniform Child Custody Jurisdiction and
16 Enforcement Act, and the federal Parental Kidnaping Prevention Act. The specific
17 procedures of those laws should govern questions arising under them.