

D R A F T

FOR APPROVAL

**AMENDMENTS TO
UNIFORM INTERSTATE ENFORCEMENT
OF DOMESTIC-VIOLENCE
PROTECTION ORDERS ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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**AMENDMENTS TO
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WITH PREFATORY NOTE AND COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC-VIOLENCE PROTECTION ORDERS ACT

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

TABLE OF CONTENTS

SECTION 1. SHORT TITLE	3
SECTION 2. DEFINITIONS	3
SECTION 3. JUDICIAL ENFORCEMENT OF ORDER	5
SECTION 4. NONJUDICIAL ENFORCEMENT OF ORDER	12
[SECTION 5. REGISTRATION OF ORDER]	13
SECTION 6. IMMUNITY	15
SECTION 7. OTHER REMEDIES	16
SECTION 8. UNIFORMITY OF APPLICATION AND CONSTRUCTION	16
SECTION 9. SEVERABILITY CLAUSE	16
SECTION 10. EFFECTIVE DATE	17
SECTION 11. TRANSITIONAL PROVISION	17

AMENDMENTS TO UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC-VIOLENCE PROTECTION ORDERS ACT

Prefatory Note

I. Introduction

The Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act (“the Act”) provides a uniform mechanism for the interstate enforcement of domestic-violence protection orders. The need for such a mechanism is founded on the widespread understanding that States have not consistently or effectively enforced domestic-violence protection orders issued by other States. The Act, therefore, has two main purposes. First, it defines the meaning of interstate enforcement in the context of the enforcement of domestic-violence protection orders. Second, it establishes uniform procedures for the effective interstate enforcement of domestic-violence protection orders.

Many States, recognizing the severity of the problems regarding the interstate enforcement of domestic-violence protection orders, have enacted legislation requiring their courts to enforce the domestic-violence protection orders of other States. Many of these statutes, however, while mandating enforcement, are 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. The Congress of the United States, as well, has enacted legislation requiring interstate enforcement of domestic-violence protection orders, but this legislation is also silent or ambiguous regarding these important questions.

First, many of the existing statutes do not sufficiently explain the core requirements of interstate enforcement of protection orders. For example, many of the state statutes, and the federal legislation, require courts and law enforcement officers to enforce the orders of other States as if they were the protection orders of the enforcing State. This provision, however, does not answer the question of whether state courts and officers are required to enforce provisions of foreign protection 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, many of the existing statutes do not specify the procedures state courts and officers must follow in enforcing foreign protection orders. For example, many of the statutes are 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. This Act resolves the issues left unanswered in existing legislation and provides a uniform scheme for enforcement of these orders.

II. The Requirements of Interstate Enforcement

The Act first defines what it means to accord interstate enforcement to domestic-violence protection orders. 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 individuals against

whom the order is enforced were given reasonable notice and had an 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 makes it clear that all the terms of the orders of the issuing States must be enforced, including terms that provide relief that the courts of the enforcing State would lack power to provide. The Act also provides that all protection orders that both recognize the standing of the protected individual to seek enforcement of the order and satisfy the criteria of validity established by the Act must be enforced. In addition, provisions of protection orders governing custody and visitation matters are enforceable under this Act. Terms that concern support are not. The terms of mutual protection orders which 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 protection 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 exists and has been violated. The Act, however, provides that if a protected individual can provide direct proof of the existence 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 probable cause to believe that a valid protection order exists and 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 an immunity provision, protecting agents of the government acting in good faith.

The Act 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 protection order and thus facilitate its enforcement.

1 **AMENDMENTS TO UNIFORM INTERSTATE ENFORCEMENT OF**
2 **DOMESTIC-VIOLENCE PROTECTION ORDERS ACT**

3
4
5
6 **SECTION 1. SHORT TITLE.** This [Act] may be cited as the Uniform Interstate
7 Enforcement of Domestic-Violence Protection Orders Act.
8

9 **SECTION 2. DEFINITIONS.** In this [Act]:

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

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

13 (3) “Mutual foreign protection order” means a foreign protection order that includes
14 provisions in favor of both the protected individual seeking enforcement of the order and the
15 respondent.

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

17 (5) “Protection order” means an injunction or other order, issued by a tribunal under the
18 domestic-violence or family-violence laws of the issuing State, to prevent an individual from
19 engaging in violent or threatening acts against, harassment of, contact or communication with, or
20 physical proximity to, another individual. The term includes an injunction or other order issued
21 under the anti-stalking laws of the issuing State.

22 (6) “Respondent” means the individual against whom enforcement of a protection order
23 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 that has jurisdiction to issue protection orders.

(8) “Tribunal” means a court, agency, or other entity authorized by law to issue or modify a protection order.

Comment

The term “protection order” generally includes only those orders issued under the domestic-violence or family-violence laws of the issuing State. ~~Protection State, and protection orders~~ issued outside of the domestic or family violence context are not enforceable under the provisions of this Act. ~~The scope of enforceable protection orders is further limited by the provisions of Section 3(b) and (d). The Act, however, does provide for the enforcement of orders issued under the anti-stalking statutes of the issuing state. These statutes will frequently be readily identifiable as specifically proscribing stalking. See e.g., Tex. Penal Code Ann. § 42.072 (Vernon 2002). Anti-stalking statutes may also be found in separate provisions of laws regulating a broader range of activity (e.g., harassment); these laws, however, must contain provisions specifically proscribing stalking. See e.g., 18 Pa. Cons. Stat. Ann. § 5504(a.1) (West 2000). The scope of enforceable protection orders is further limited by the provisions of Sections 3(b) and (c).~~ In addition, the term “protection order” includes an order modifying a previous order. Thus, a modified order, 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 the parties 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 State; 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 Act also recognizes that the parties may have been called by different terms, e.g. plaintiff, defendant, petitioner, in the issuing State.

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

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

1 across state or tribal lines.

2
3 The Act uses the term “tribunal,” rather than “court,” in order to accommodate States that
4 rely upon administrative or other entities to issue or modify protection orders.

5
6
7 **SECTION 3. JUDICIAL ENFORCEMENT OF ORDER.**

8 (a) A person authorized by the law of this State to seek enforcement of a protection order
9 may seek enforcement of a valid foreign protection order in a tribunal of this State. The tribunal
10 shall enforce the terms of the order, including terms that provide relief that a tribunal of this State
11 would lack power to provide but for this section. The tribunal shall enforce the order, whether
12 the order was obtained by independent action or in another proceeding, if it is an order issued in
13 response to a complaint, petition, or motion filed by or on behalf of an individual seeking
14 protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the
15 procedures of this State for the enforcement of protection orders.

16 (b) A tribunal of this State may not enforce a foreign protection order issued by a
17 tribunal of a State that does not recognize the standing of a protected individual to seek
18 enforcement of the order.

19 (c) A tribunal of this State shall enforce the provisions of a valid foreign protection order
20 which govern custody and visitation, if the order was issued in accordance with the jurisdictional
21 requirements governing the issuance of custody and visitation orders in the issuing State.

22 ~~(d) A tribunal of this State may not enforce under this [Act] a provision of a foreign~~
23 ~~protection order with respect to support.~~

24 ~~(e)~~(d) A foreign protection order is valid if it:

25 (1) identifies the protected individual and the respondent;

(2) is currently in effect;

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

(4) was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the rights of the respondent to due process.

~~(f)~~(e) A foreign protection order valid on its face is prima facie evidence of its validity.

~~(g)~~(f) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

~~(h)~~(g) A tribunal of this State may enforce provisions of a mutual foreign protection order which favor a respondent only if:

(1) the respondent filed a written pleading seeking a protection order from the tribunal of the issuing State; and

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

[Legislative Note: While Section 3(b) limits enforcement under this Act to those orders which recognize the standing of a protected individual to seek enforcement of the order, states should consider enacting separate criminal laws providing for the prosecution of individuals who violate the terms of a foreign protection order, including the terms of a criminal order.]

Comment

Subsection (a) implements the core purpose of the Act.. Effective interstate enforcement of protection orders is founded on the principle that enforcing States must enforce all the substantive terms of a foreign protection order, including terms that provide relief that a tribunal of the enforcing State would lack power to provide, but for this Act. This provision means that

1 the tribunals of enforcing States must enforce the specific terms of a foreign protection order
2 even if their state law would not allow the relief in question. For example, if the law of the
3 issuing State provides that a court may issue a protection order including terms that concern the
4 possession of property, e.g., an order giving the protected individual possession of the family
5 automobile, but the law of the enforcing State does not authorize such substantive relief, the
6 tribunal of the enforcing State must enforce the order in its entirety. To give another example, if
7 the law of the issuing State allows protection orders to remain effective for a longer period than
8 is allowed by the enforcing State, the tribunal of the enforcing State should enforce the order for
9 the time specified in the order of the issuing State. In a proceeding to enforce the substantive
10 terms of the foreign protection order, however, the court of the enforcing State shall follow its
11 own procedures.

12
13 Subsection (a) provides that any person authorized by the law of the enforcing State to
14 seek enforcement of a protection order may seek enforcement of a valid foreign protection order
15 in the enforcing State. This provision recognizes that States frequently authorize public agencies
16 and officers, such as a local prosecutor, to bring enforcement actions on behalf of a protected
17 individual. The Act, however, in recognizing the importance of these agencies and officers,
18 should not be interpreted to mean that States, and their agencies and officers, are required to
19 bring these actions when possible. This subsection further provides that only protection orders
20 that were issued in response to a complaint, petition, or motion filed by or on behalf of an
21 individual seeking protection can be enforced under this Act; orders issued sua sponte are not
22 enforceable under this Act.

23
24 Subsection (b) addresses the problem of the enforcement of protection orders issued by
25 criminal courts. While it is not the purpose of this section to surpass the constitutional restraints
26 against States enforcing the criminal laws of other States or to disturb the normal process of
27 interstate criminal law enforcement, the Act is designed to facilitate the enforcement of orders
28 issued by States which allow the equivalent of civil protection orders to be issued by a criminal
29 court. The principle of law governing the distinction between a criminal and a civil law, as
30 articulated by the Supreme Court of the United States in *Huntington v. Attrill*, 146 U.S. 657
31 (1892), is that a criminal law vindicates, through punishment, a harm against the public, while a
32 civil law provides a remedy to the individual injured by the wrongful acts of another. A civil
33 protection order, therefore, is one that provides a remedy to an individual fearing harm from
34 another individual; a criminal protection order is one that provides a remedy to the public as a
35 whole, because a public, not an individual, wrong is involved.

36
37 The Act seeks, and is constitutionally authorized, only to provide a mechanism for the
38 enforcement of civil protection orders; therefore, the Act only provides for the interstate
39 enforcement of protection orders if the order of the issuing State recognizes the standing of a
40 protected individual to seek enforcement of the order. Thus, orders recognizing this standing
41 may be enforced even if they are issued by a criminal court because they operate as civil orders.
42 If, on the other hand, the protection order may only be enforced by criminal sanctions upon the
43 request of the State, then it does not qualify for enforcement under this Act. For example, orders
44 issued by criminal courts that provide for the revocation of bail, probation, or parole upon motion

1 by the State will not qualify for enforcement under this Act. As several States have already done,
2 enforcing States may, and are encouraged, to enact and enforce a separate criminal law providing
3 for the prosecution of individuals who violate a foreign protection order, including, if the State so
4 chooses, the terms of a criminal order. In addition, the respondent may have violated other
5 criminal laws of the enforcing State; the enforcing State may, of course, prosecute the respondent
6 for these violations.

7
8 Subsections (c) and (d) further defines the scope of enforceable protection orders under
9 the Act. ~~It provides Subsection (c) provides~~ that the provisions of protection orders that govern
10 custody and visitation rights must be enforced. Enforcement of these provisions is essential
11 because, first, the award of custody is often essential for the protection of children from potential
12 violence, and, second, because the protected individual will not seek a safe distance from a
13 threatening individual if custody of a child is jeopardized . These provisions may only be
14 enforced, however, if they were issued in accordance with the jurisdictional requirements for the
15 issuance of all custody and visitation orders, contained, depending on the State, either in the
16 Uniform Child Custody Jurisdiction Act or the Uniform Child Custody Jurisdiction and
17 Enforcement Act, and the federal Parental Kidnaping Prevention Act. This Act, however, does
18 not provide for the enforcement of orders governing custody and visitation rights that are not
19 included in a protection order.

20
21 ~~Subsection (d) provides that orders or provisions of protection orders governing support~~
22 ~~are not enforceable under this Act; provisions of these orders should be enforced using the~~
23 ~~process provided in the specific laws governing the issuance, modification, and enforcement of~~
24 ~~these orders, including, but not limited to, the Uniform Interstate Family Support Act (“UIFSA”).~~
25 The Act does not provide for the enforcement of orders or provisions of foreign protection orders
26 governing support; these orders or provisions, however, should be enforced under the specific
27 laws governing the issuance, modification, and enforcement of support orders, including, but not
28 limited to, the Uniform Interstate Family Support Act (UIFSA). UIFSA, which has been adopted
29 by every State, establishes a comprehensive and effective statutory scheme for the enforcement
30 of support orders. ~~The Act is consistent with Subsections (c) and (d) are consistent with the~~
31 federal Violence Against Women Act, 18 U.S.C. Sec. 2266(5) (as amended by The Violence
32 Against Women Act of 2000, Pub. L. No. 106-386) which provides that support or custody
33 orders issued pursuant to state divorce or child custody laws are not to be treated as protection
34 orders subject to interstate enforcement.

35
36 Subsection ~~(e)~~ (d) requires that, to be valid for the purpose of enforcement under this Act,
37 a foreign protection order must be “currently in effect.” This provision includes orders that have
38 been modified; the modified order is the one currently in effect. While the Act requires that a
39 foreign protection order, to be valid, identify the protected individual and respondent, merely
40 technical errors, such as an incorrect spelling of a name, should not preclude enforcement of the
41 order. The question of the validity of an order is a question of law for the court of the enforcing
42 State. Once an order is adjudged valid, the proceeding shall be governed by the established
43 procedures of the enforcing State.

1 The respondent's constitutional right to due process is protected by the opportunity to
2 raise defenses in the enforcement proceeding, as provided in subsection ~~(g)~~: (f). If, for example,
3 the respondent was not provided with reasonable notice and opportunity to be heard by the
4 tribunal of the State issuing the protection order, the enforcing tribunal may not enforce the
5 order. Thus, the interstate enforcement of a valid foreign protection order, even without a prior
6 hearing, does not deprive the respondent of any rights to due process because the respondent was
7 provided with reasonable notice and opportunity to be heard when the order was issued.
8

9 The enforcement mechanisms established by the Act do not require the presentation by
10 the protected individual of an authenticated copy of the foreign protection order. While States, as
11 required by the Constitution and federal statutes that articulate authentication requirements,
12 including 28 U.S.C. Sec. 1738, must accord properly authenticated foreign judgments full faith
13 and credit enforcement, they may choose to enforce foreign orders they would not be required to
14 enforce under the provisions of the Constitution or other federal law. By adopting this Act,
15 States have chosen to give that extra measure of full faith and credit to foreign protection orders.
16

17 In addition, in recent years, particularly with regard to the enforcement of domestic
18 relations orders, the federal government has employed the power granted to it by Article IV, Sec.
19 1 of the Constitution of the United States to prescribe the manner in which States give full faith
20 and credit to the acts, records, and proceedings of other States to require States to enforce foreign
21 orders in circumstances in which States have traditionally been reluctant to render such
22 enforcement. For example, the federal Parental Kidnaping Prevention Act, 28 U.S.C. Sec.
23 1738A, requires greater interstate enforcement of child custody orders and the federal Personal
24 Responsibility and Work Opportunity Reconciliation Act, 110 Stat. 2105 (1996), requires that
25 States, in order to facilitate the enforcement of support orders, adopt the provisions of the
26 Uniform Interstate Family Support Act. The Violence Against Women Act extends the principle
27 of these laws to the subject of the interstate enforcement of domestic-violence protection orders.
28

29 Subsection ~~(h)~~: (g), adapted from the federal Violence Against Women Act, 18 U.S.C.
30 Sec. 2265(c), addresses the enforcement of mutual foreign protection orders, which contain
31 provisions protecting both the protected individual and the respondent. Provisions of a mutual
32 foreign protection order issued in favor of the respondent will not be enforced without proof that
33 the respondent filed a written pleading seeking a protection order. If a respondent can prove that
34 he or she made a specific request for relief and that the issuing tribunal made specific findings
35 that the respondent was entitled to the requested relief, the protection orders will be enforced
36 against the protected individual.
37

38 In order to facilitate the interstate enforcement of foreign protection orders, States should
39 strongly consider requiring tribunals that issue protection orders to state clearly that these orders
40 are entitled to interstate enforcement under both federal and state law. Such enforcement would
41 also be greatly facilitated if issuing States provided each protected individual with a certified
42 copy of the protection order. In addition, States should consider adopting a standard certification
43 or confirmation form stating the protection order issued by their tribunals satisfies the criteria of

1 validity articulated in subsection ~~(e)~~; (d), thus qualifying the protection order for interstate
2 enforcement. Use of the following certification form is recommended.
3
4

1 _____ (Name), : IN THE _____ COURT OF
2 Plaintiff : _____ (County/Judicial District)
3 : _____ (State/Territory)
4 vs. : CIVIL ACTION – LAW
5 : PROTECTION/RESTRAINING ORDER
6 _____ (Name), :
7 Defendant : Docket No. _____, 200____

8 Certification of Protection/Restraining Order

9 It is hereby certified that the attached is a true and correct copy of the order entered in the above-
10 captioned action on _____ (date) and that the original of the attached order was duly
11 executed by the judicial authority whose signature appears thereon. The order expires on
12 _____ (date).
13

14 The order is: [] a civil protection/restraining order
15 OR [] a criminal protection/restraining order, that recognizes the standing of the
16 plaintiff to seek enforcement of the order
17

18 It is further certified that:

19 (a) the issuing court determined that it had jurisdiction over the parties and the subject matter under
20 the laws of _____ (state or Indian tribe).

21 (b) the defendant was given reasonable notice and had opportunity to be heard before this order was
22 issued; or if the order was issued ex parte, the defendant was given notice and had opportunity to be
23 heard after the order was issued, consistent with the rights of the defendant to due process.

24 (c) the order was otherwise issued in accordance with the requirements of the Uniform Interstate
25 Enforcement of Domestic-Violence Protection Orders Act, and the Violence Against Women Act, 18
26 U.S.C. § 2265.
27

28 For custody and visitation orders:

29 the order was issued in accordance with the requirements of the Uniform Child Custody Jurisdiction Act
30 or the Uniform Child Custody Jurisdiction and Enforcement Act of this state/territory and is consistent
31 with the provisions of the Parental Kidnaping Prevention Act. 28 U.S.C. § 1738A.
32

33 The attached order shall be presumed to be valid and enforceable in this and other jurisdictions.
34

35 Signature of Clerk of Court or other authorized official: _____

36 Judicial District: _____ Address _____

37 Phone: _____ Fax: _____ Date: _____

38 Seal:

SECTION 4. NONJUDICIAL ENFORCEMENT OF ORDER.

(a) A law enforcement officer of this State, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a tribunal of this State. Presentation of a 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 foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

(b) If a foreign protection order is not presented, a law enforcement officer of this State may consider other information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(c) If a law enforcement officer of this State determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

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

Comment

The enforcement procedures in subsections (a) and (b) rely on the sound exercise of the judgment of law enforcement officers to determine whether there exists probable cause to believe that a valid foreign protection order exists and has been violated. These procedures anticipate that there will be many instances in which the protected individual does not have, or cannot, under the circumstances, produce a paper copy of the foreign protection order. Subsection (a)

1 establishes a per se rule for determining probable cause of the existence of an order. If the
2 protected individual presents, whether by providing a paper copy (which need not be certified) of
3 a protection order or through an electronic medium, such as access to a state registry of orders,
4 proof of a facially valid order, the order should be enforced. In determining whether there is
5 proof of a facially valid order, a law enforcement officer, where possible, may, and, indeed,
6 should, search, using an electronic or other medium, a state or federal registry of orders.
7

8 Subsection (b) concerns the circumstance in which the protected individual cannot
9 present direct proof of the protection order. In this situation, law enforcement officers are
10 expected to obtain information from all available sources, including interviewing the parties and
11 contacting other law enforcement agencies, to determine whether there is a valid protection order
12 in effect. If the officer finds, after considering the totality of the circumstances, that there is
13 probable cause to believe that a valid foreign protection order exists and has been violated, he or
14 she should enforce the order. This probable cause determination must meet the constitutional
15 standards for determining probable cause. If it is later determined that no such order was in place
16 or the order was otherwise unenforceable, law enforcement agencies, officers, or other state
17 officials will be protected by the immunity provision of Section 6 for actions taken in good faith.
18

19 Subsection (c) provides that if a law enforcement officer discovers in the course of a
20 probable cause investigation that the respondent has not been notified of the issuance of or served
21 with an otherwise valid foreign protection order, the officer must then inform the respondent of
22 the terms and conditions of the protection order and make a reasonable effort to serve the order
23 upon the respondent . The respondent must be allowed a reasonable opportunity to comply with
24 the order before the order is enforced.
25

26 Subsection (d) makes clear that, if a State either adopts its own process for the
27 registration or filing of foreign protection orders or adopts the process provided in Section 5, the
28 State shall not require the registration or filing of a foreign protection order for enforcement.
29
30
31

32 **[SECTION 5. REGISTRATION OF ORDER.**

33 (a) Any individual may register a foreign protection order in this State. To register a
34 foreign protection order, an individual shall:

35 (1) present a certified copy of the order to [the state agency responsible for the
36 registration of such orders]; or

(2) present a certified copy of the order to [an agency designated by the State] and request that the order be registered with [the agency responsible for the registration of such orders].

(b) Upon receipt of a foreign protection order, [the agency responsible for the registration of such orders] shall register the order in accordance with this section. After the order is registered, [the responsible agency] shall furnish to the individual registering the order a certified copy of the registered order.

(c) [The agency responsible for the registration of foreign protection orders] shall register an order upon presentation of a copy of a protection order which has been certified by the issuing State. A registered foreign protection order that is inaccurate or is not currently in effect must be corrected or removed from the registry in accordance with the law of this State.

(d) An individual registering a foreign protection order shall file an affidavit by the protected individual stating that, to the best of the protected individual's knowledge, the order is currently in effect.

(e) A foreign protection order registered under this [Act] may be entered in any existing state or federal registry of protection orders, in accordance with applicable law.

⊢(f) A fee may not be charged for the registration of a foreign protection order.⊣

Comment

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

1 While the management of state registries is purely governed by state law, in
2 implementing a registration system, however, enforcing States should strongly consider keeping
3 these protection orders under seal. The purpose of more effectively protecting victims of
4 domestic violence will be undermined if respondents can use the process of registration to locate
5 the very people who are trying to escape from them. In addition, the federal Violence Against
6 Women Act, as amended by the Violence Against Women Act of 2000 (Pub. L No.106-386),
7 prohibits States that provide for the registration or filing of orders from, without the permission
8 of the individual registering or filing the order, notifying other States of the registration or filing
9 of the order.

10
11 Subsection (a) provides that any person, including a potential respondent, may register
12 foreign protection orders. This reason behind this provision is to ensure that all parties have the
13 opportunity to provide relevant information to the State. Orders, for example, may be modified
14 with custody arrangements. Subsection (a) also requires that a person seeking to register a foreign
15 protection order must present a certified copy of that order. The copy must be a writing on paper,
16 thus exempting this requirement from the provisions of the Uniform Electronic Transactions Act.

17
18 Subsection (c) provides that if the State has registered orders that are no longer in effect
19 or are inaccurate, these orders must be removed from the registry or, in the case of error,
20 corrected. The precise method of how state and federal registries manage their registries,
21 including the deletion of inaccurate information, is governed by each government's law
22 regarding the management of records.

23
24 If an order is registered under this section, the individual who registered the order is
25 expected to inform the enforcing State of any modifications to the registered protection order.

26
27 ~~Subsection (f) is bracketed because some States may wish to charge a fee for registration.~~
28
29
30

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

1 **Comment**

2 States may, if they wish, substitute their own immunity provisions, so long as law
3 enforcement officers, agencies, or other officials involved in the registration or enforcement of
4 foreign protection orders, under the immunity scheme chosen, are not dissuaded from enforcing
5 such orders because of the fear of potential liability. This immunity provision includes States,
6 state and local governmental agencies, and all state and local government officials acting in their
7 official capacity in order to prevent those seeking the imposition of criminal and civil liability for
8 acts or omissions done in good faith in an effort to comply with the provisions of this Act from
9 circumventing this immunity provision. The necessity for a generous immunity provision for the
10 enforcement of foreign protection orders does not preclude state and local governments from
11 using personnel and other internal sanctions in order to prevent and punish actions that, in the
12 absence of this immunity provision, would have rendered the government agencies, officers, or
13 officials civilly or criminally liable.
14
15
16

17 **SECTION 7. OTHER REMEDIES.** A protected individual who pursues remedies under
18 this [Act] is not precluded from pursuing other legal or equitable remedies against the
19 respondent.
20

21 **Comment**

22 This section clarifies that the protection orders enforced under the Act are not the only
23 means of protection available to victims of domestic violence. Other legal remedies, such as tort
24 actions and criminal prosecution, are left undisturbed by this Act.
25
26

27 **SECTION 8. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
28 applying and construing this Uniform Act, consideration must be given to the need to promote
29 uniformity of the law with respect to its subject matter among States that enact it.
30

31 **SECTION 9. SEVERABILITY CLAUSE.** If any provision of this [Act] or its application
32 to any person or circumstance is held invalid, the invalidity does not affect other provisions or

1 applications of this [Act] which can be given effect without the invalid provision or application,
2 and to this end the provisions of this [Act] are severable.

3 **Comment**

4 While the Congress of the United States has, in recent years, in the field of domestic
5 relations, repeatedly invoked its power under the Full Faith and Credit Clause of Article IV of the
6 Constitution to prescribe the manner in which States afford full faith and credit to the judgments
7 of other States, the Supreme Court of the United States has not authoritatively decided whether
8 Congress may use this power to require States to enforce foreign orders which are not final, and,
9 thus, have not been traditionally afforded full faith and credit. It is, thus, possible that the
10 provision of the federal Violence Against Women Act requiring interstate enforcement of
11 domestic-violence protection orders will be held unconstitutional. One of main purposes of this
12 Act is to provides a mechanism for the interstate enforcement of domestic-violence protection
13 orders that does not rely on any federal mandate; by enacting this Act, States are exercising their
14 independent authority to recognize and enforce foreign orders that they would not otherwise be
15 required to enforce under the Constitution. Thus, if the Violence Against Women Act is
16 eventually found unconstitutional, interstate enforcement of domestic-violence protection orders
17 should continue under this Act.

18
19 Conversely, if the federal mandate is held to be constitutionally valid, it is possible that
20 courts may conclude that, in some areas, the federal legislation requires greater enforcement than
21 that provided by this Act. In this case, this subsection provides that if one or more provisions of
22 the Act are declared invalid, those provisions of the Act that are severable from those declared
23 invalid should be given effect.

24
25
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27 **SECTION 10. EFFECTIVE DATE.** This [Act] takes effect on

28
29 **SECTION 11. TRANSITIONAL PROVISION.** This [Act] applies to protection orders
30 issued before [the effective date of this [Act]] and to continuing actions for enforcement of
31 foreign protection orders commenced before [the effective date of this [Act]]. A request for
32 enforcement of a foreign protection order made on or after [the effective date of this [Act]] for
33 violations of a foreign protection order occurring before [the effective date of this [Act]] is
34 governed by this [Act].

1 **Comment**

2 The provisions of this Act apply to all requests for enforcement of foreign protection
3 orders, both continuing and newly filed, made on or after its effective date. In addition, the
4 provisions of this Act apply to the enforcement of foreign protection orders issued before the
5 effective date of this Act and to requests for enforcement of foreign protection orders in which
6 the alleged violation took place before the effective date of the Act.
7

8 Application of the Act in these circumstances does not constitute an unconstitutional ex
9 post facto law because, under the principles of the Full Faith and Credit Clause of the
10 Constitution of the United States, valid foreign protection orders should have always been
11 entitled to interstate enforcement. As stated by the Supreme Court of the United States in
12 *Weaver v. Graham*, 450 U.S. 24, 28 (1981), an ex post facto law is a law that imposes a
13 punishment for an act that was not punishable at the time the act was committed or imposes
14 additional punishment to that originally prescribed. Enforcement, under the Act, of a preexisting
15 order does not punish acts that were not punishable at the time the acts were committed; the
16 order, as soon as it was entered, subjected the respondent to punishment upon its violation. The
17 laws of the enforcing States also prescribed, before enforcement under this Act, the amount of
18 punishment imposed for the violation of protection orders. The Act, therefore, does not effect a
19 substantive change in the law regarding the enforcement of foreign protection orders;
20 respondents should have always been aware that protection orders issued by States are subject to
21 interstate enforcement. This Act only ensures that States carry out their constitutional
22 responsibility to enforce these orders.