

D R A F T

FOR DISCUSSION ONLY

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

REVISED DRAFT

NATIONAL CONFERENCE OF COMMISSIONERS

ON UNIFORM STATE LAWS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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July 7, 2015

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CANADIAN DOMESTIC VIOLENCE PROTECTION ORDERS ACT**

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

3
4 **Prefatory Note**

5
6 The Uniform Recognition and Enforcement of Canadian Domestic Violence Protection
7 Orders Act (“the act”) provides for the enforcement of domestic violence protection orders
8 issued by Canadian courts. Reflecting the friendship between the United States and Canada,
9 citizens move freely between the two countries, freedom that in certain limited circumstances
10 can work against victims of domestic violence. Canada has granted recognition to protection
11 orders of the United States and other countries in the Uniform Enforcement of Canadian
12 Judgments and Decrees Act (UECJDA). By this act, enacting states accord similar recognition
13 to protection orders from 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,¹ in which Congress required states to grant full faith and credit to the protection orders
19 of other states.² Many states enacted legislation recognizing the domestic violence orders of
20 sister states,³ and in 2002, 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.⁴ 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. In
34 February, 2015, the Conference released more information comparing national regimes in
35 *Recognition and Enforcement of Foreign Civil Protection Orders: Additional Statistical and*
36 *Comparative Information on National Law*, which concludes by suggesting that the Experts’
37 Group reconvene and consider “more concrete recommendations [about] a possible new

¹ 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.).

² 18 U.S.C § 2265.

³ 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).

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

1 international instrument in this area.”⁵ In the meantime, this act takes a step towards recognition
2 and enforcement of protection orders from other countries by providing for the recognition and
3 enforcement of Canadian domestic violence protection orders.
4

5 This act draws from the UIEDVPOA and the UECJDA in its recognition and
6 enforcement of Canadian domestic violence protection orders. The two Acts are similar in
7 several important respects. Both recognize domestic violence protection orders without
8 requiring that the party seeking enforcement register the foreign order. Likewise, both provide
9 that a law enforcement agency or court respect a facially valid order until successfully
10 challenged after the request for emergency action has passed.
11

12 The UIEDVPOA and UECJDA differ in other respects, with the UECJDA providing
13 more narrow recognition and enforcement of protection orders from other countries than the
14 UIEDVPOA provides for orders from sister states. The more limited goal of the UECJDA
15 explains its more limited approach. The UECJDA seeks merely to separate temporarily an
16 individual at risk from another individual to avoid “the possibility of violence arising from a
17 failure to act...”⁶ In other words, the UECJDA focuses only on the emergency presented by the
18 threat of violence from an individual who has been ordered to stay away from the individual who
19 is now the subject of the threat. The UECJDA seeks to empower law enforcement in that
20 emergency to take “cautious preventive action” that may be challenged by the parties “if
21 subsequently viewed as inappropriate or inaccurate by either party.”⁷
22

23 Because of the focus of the UECJDA, it recognizes and enforces only those parts of a
24 foreign order that deal with
25

26 (a) being in physical proximity to a specified person or following a specified person
27 from place to place;

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

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

30 (d) engaging in molesting, annoying, harassing, or threatening conduct directed at a
31 specified person.⁸
32

33 The UIEDVPOA, on the other hand, recognizes all parts of the sister state protection order,
34 including parts of the order relating to custody and visitation.⁹
35

36 This act follows the approach of the UECJDA, recognizing and enforcing only the parts
37 of the Canadian domestic violence protection order requiring no contact. Other Acts and
38 conventions deal with issues of custody between countries, specifically, the UCCJEA and its
39 2013 amendments that implement the Hague Convention on the Protection of Children. This act,
40

⁵ Hague Conference on Private International Law, Recognition and Enforcement of Foreign Civil Protection Orders: Additional Statistical and Comparative Information on National Law, Hague Private International Law, Prel. Doc. No. 4 (Feb. 2015), http://www.hcch.net/upload/wop/gap2015pd04_en.pdf, para. 53.

⁶ Unif. Enforcement of Canadian Decrees and Judgments Act, note [8], p. 3 [hereinafter UECJDA].

⁷ *Id.*, note [6], p. 3.

⁸ UECJDA, § 9.1.

⁹ UIEDVPOA, Introduction. The UIEDVPOA does not enforce provisions related to support, however. *Id.*

1 like the UECJDA, pursues the narrower goal of addressing the emergency of threatened
2 violence.

3
4 This act follows the UECJDA and its more limited approach also on other issues.
5 Because of the limits on enforcing the criminal orders of another country, this act enforces only
6 Canadian *civil* domestic violence orders. While the UIEDVPOA's definition of protection
7 orders includes certain criminal orders, such as anti-stalking orders, other sections of the
8 UIEDVPOA recognize the problems inherent in enforcing the criminal law of a sister state.¹⁰
9 The international setting only multiplies the issues; therefore, the act recognizes and enforces
10 only Canadian civil domestic violence protection orders.

11
12 The act also limits recognition of Canadian domestic violence protection orders to those
13 orders that issue from courts. The UIEDVPOA recognizes protection orders issued not just by
14 *courts*, but also by *tribunals*, including an "agency...or other entity authorized by law to issue or
15 modify a protection order."¹¹ Following the lead of the UECJDA, this act provides for narrower
16 recognition, limiting the recognition of Canadian domestic violence protection orders to civil
17 orders issued by Canadian courts.¹²

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

29
30 The act also provides uniform procedures for the cross-border enforcement of Canadian
31 domestic violence protection orders. The act envisions that the enforcement of Canadian
32 domestic violence protection orders will require law enforcement officers of enforcing states to
33 rely on probable cause judgments that a valid order exists and has been violated. The act,
34 however, provides that if a protected individual can provide direct proof of the existence of a
35 facially valid order, for example, by presenting a paper copy or accessing an electronic registry,
36 the copy or registry conclusively establishes probable cause. If there is no such proof, the act
37 nevertheless requires enforcement if officers, relying on the totality of the circumstances,
38 determine that there is probable cause to believe that a valid protection order exists and has been
39 violated. The individual against whom the order is enforced will have sufficient opportunity to
40 demonstrate that the order is invalid if and when the case is brought before the enforcing

¹⁰ 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.

¹¹ UIEDVPOA, § 2 (8).

¹² UECJDA, § 9.1.

¹³ UIEDVPOA, § 2 (5). For some of the criticism of this provision, see Sacks, *supra* note 3, at p. 846.

¹⁴ UECJDA, § 9.1.

1 tribunal. Law enforcement officers, as well as other government agents, will be encouraged to
2 rely on probable cause judgments by the act's inclusion of an immunity provision, protecting
3 agents of the government acting in good faith.
4

5 The act does not require individuals seeking enforcement of a protection order to register
6 or file the order with the enforcing state. It does, however, include an optional registration
7 process. This process permits individuals to register a Canadian domestic violence protection
8 order by presenting a copy of the order to a responsible tribunal or agency designated by the
9 state. The issuing Canadian court must certify the copy presented for registration. The purpose
10 of these procedures is to make it as easy as possible for the protected individual to register the
11 protection order and facilitate its enforcement.

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

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

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

7 (1) “Canadian domestic violence protection order” means a judgment or part of a
8 judgment or order issued in a civil proceeding by a court of Canada under law of the issuing
9 jurisdiction that relates to domestic violence and prohibits a respondent from:

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

12 (B) directly or indirectly contacting or communicating with a protected individual
13 or other individual described in the order;

14 (C) being within a certain distance of a specified place or location associated with
15 a protected individual; or

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

18 (2) “Domestic protection order” means an injunction or other order issued by a tribunal
19 that relates to domestic violence, family violence, or stalking laws of this state to prevent an
20 individual from engaging in violent or threatening acts against, harassment of, direct or indirect
21 contact or communication with, or being in physical proximity to another individual.

22 (3) “Issuing court” means the court that issues a Canadian domestic violence protection
23 order.

24 (4) “Law-enforcement officer” means an individual authorized by law of this state other
25 than this [act] to enforce a domestic protection order.

(5) “Protected individual” means an individual protected by a Canadian domestic violence protection order.

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

(7) “Respondent” means an individual against whom a Canadian domestic violence protection order is issued.

(8) “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 a federally recognized Indian tribe.]

(9) “Tribunal” means a court, agency, or other entity authorized by law of this state other than this [act] to establish, enforce, modify, or register a domestic protection order.

Comment

The definition of “Canadian domestic violence protection order” draws on the definition of “foreign civil protection order” in the Uniform Enforcement of Canadian Judgments and Decrees Act (UECJDA) at § 9.1 The UECJDA provides:

foreign civil protection order’ means a foreign judgment, or a portion of a foreign judgment, made by a court of a foreign state that prohibits a specified individual from:

- (a) being in physical proximity to a specified person or following a specified person from place to place;
- (b) contacting or communicating with, either directly or indirectly, a specified person;
- (c) attending at or within a certain distance of a specified place or location; or
- (d) engaging in molesting, annoying, harassing or threatening conduct directed at a specified person.

UECJDA, § 9.1. The definition of “Canadian domestic violence protection order” also recognizes that no-contact provisions may appear in civil judgments and orders addressing other topics. The act applies only to the parts of those judgments and orders relating to protection from domestic violence.

The definition of “domestic protection order” draws on the definition of “protection order” in the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act (UIEDVPOA) in § 2(5). The UIEDVPOA provides:

1 “Protection order” means an injunction or other order, issued by a tribunal under the
2 domestic-violence, family-violence, or anti-stalking laws of the issuing State, to prevent
3 an individual from engaging in violent or threatening acts against, harassment of, contact
4 or communication with, or physical proximity to, another individual.

5 UIEDVPOA, §2(5).

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

10
11 Likewise, while a Canadian domestic violence protection order recognized and enforced
12 by this act focuses on keeping the respondent from physically contacting the protected
13 individual, it is not necessarily so limited. For example, the act enforces the parts of a Canadian
14 domestic violence protection order that prohibit the respondent from “directly or indirectly
15 contacting or communicating with a protected individual *or other individual described in the*
16 *order* (emphasis added).” The respondent might talk to the administrative assistant of the school
17 a child attends to get information about the comings and goings of the protected individual, the
18 mother of the child. For this reason, Canadian domestic violence protection orders may prohibit
19 communication with the third party, in this example, the administrative assistant of the child’s
20 school.

21
22 Also, the act enforces the parts of a Canadian domestic violence protection order that
23 prohibit the respondent from “molesting, annoying, harassing, or engaging in threatening
24 conduct directed at a protected individual.” The respondent may threaten a family pet, for
25 example, as a way of harassing the protected individual. Under those circumstances, the
26 Canadian domestic violence protection order proscribes more than physical contact with a
27 protected individual.

28
29 In other respects, the term “Canadian domestic violence protection order,” at least as used
30 in this act, is more limited than domestic protection orders. In the United States, protection order
31 statutes give a judge a wide range of options beyond ordering a defendant not to contact or
32 harass the plaintiff. The domestic protection order may, e.g., provide for custody of the minor
33 children, decide who gets the family pet, order possession of a vehicle to the petitioning party,
34 require the defendant to make rent or mortgage payments, etc. *See, e.g.,* New Jersey Statutes
35 Annotated § 2C-25-29. In addition, because of federal legislation restricting possession of
36 firearms by batterers, *see* 18 U.S.C. § 922(d)(8), domestic protection orders may include
37 provisions ordering the batterer not to possess firearms. N.J.S.A. §2C:25-29(b)(16).

38
39 As explained in the prefatory note, this act provides for international recognition and
40 enforcement of another country’s protection orders, the first act in this country to do so. The
41 UECJDA recognizes only the no-contact provisions of domestic protection orders from the
42 United States and other countries, and this act takes a similarly limited approach to the
43 recognition and enforcement of Canadian domestic violence protection orders. The party who
44 seeks the recognition and enforcement of a Canadian domestic violence protection order may
45 later seek the more comprehensive provisions in a proceeding for a domestic protection order.

Moreover, under the UIEDVPOA, “protection orders” include a narrow category of orders in criminal proceedings. UIEDVPOA § 2 (5). This act limits Canadian domestic violence protection orders to orders issued in civil proceedings. By defining “tribunal” to include an entity authorized to enforce a Canadian domestic violence protection order, however, the act recognizes that a tribunal may include a court that imposes a criminal penalty for violation of a Canadian domestic violence protection order. 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 domestic violence protection order.

Also, a Canadian domestic violence 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 Canadian 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 Canadian protection order. The “protected individual” may be a child, for example, on whose behalf 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 Canadian court.

SECTION 3. ENFORCEMENT OF CANADIAN DOMESTIC VIOLENCE

PROTECTION ORDER BY LAW-ENFORCEMENT OFFICER.

(a) If a law-enforcement officer determines under subsection (b) or (c) that there is probable cause to believe a valid Canadian domestic violence protection order exists and the order has been violated, the officer shall enforce the order as if it were an order of a tribunal.

(b) Presentation to a law-enforcement officer of a record of a Canadian domestic violence protection order that identifies both a protected individual and a respondent and on its face is in effect constitutes probable cause to believe that a valid order exists.

(c) Presentation to a law-enforcement officer of a record of a Canadian domestic violence protection order is not required for enforcement. If the order is not presented as provided in

1 subsection (b), a law-enforcement officer may consider other information in determining whether
2 there is probable cause to believe that a valid Canadian domestic violence protection order exists.

3 (d) If a law-enforcement officer determines that an otherwise valid Canadian domestic
4 violence protection order cannot be enforced because the respondent has not been notified or
5 served with the order, the officer shall notify the protected individual that the officer will make
6 reasonable efforts to contact the respondent, consistent with the safety of the individual. After
7 notice to the individual and consistent with the safety of the individual, the law-enforcement
8 officer shall make reasonable efforts to inform the respondent of the order, serve a copy of the
9 order on the respondent, and allow the respondent a reasonable opportunity to comply with the
10 order before the officer enforces the order.

11 (e) If a law-enforcement officer determines that an individual is a protected individual,
12 the officer shall inform the individual of available local victim services.

13 **Comment**

14
15 This section draws on § 4 of the Uniform Interstate Enforcement of Domestic-Violence
16 Protection Orders Act (UIEDVPOA). In this act, enforcement by law enforcement implements
17 the act's core purpose. The enforcement procedures in subsections (a), (b), and (c) rely on the
18 sound exercise of the judgment of law-enforcement officers to determine whether there exists
19 probable cause to believe that a valid Canadian domestic violence protection order exists and has
20 been violated. These procedures anticipate that there will be many instances in which the
21 protected individual does not have, or cannot, under the circumstances, produce a paper copy of
22 the Canadian domestic violence protection order.

23
24 Subsection (b) refers to the most common, but not the only means, of determining
25 probable cause of the existence of an order. If the protected individual presents proof of a
26 facially valid order, the order should be enforced. The protected individual may provide this
27 proof with a paper copy of a Canadian domestic violence protection order (which need not be
28 certified) or through an electronic medium, such as a registry of Canadian domestic violence
29 protection orders. In determining whether there is proof of a facially valid order, a law
30 enforcement officer should search a registry of orders, if possible, using an electronic or other
31 medium.

32 This section applies with equal force to orders written in a language other than
33 English. As of this date, the province of Quebec does not have stand-alone civil domestic

1 violence legislation for the purpose of issuing protection orders. See
2 <http://www.justice.gc.ca/eng/cj-jp/fv-vf/laws-lois.html>. For this reason, there may be relatively
3 few Canadian domestic violence protection orders in a language other than English.

4 Subsection (c) describes what should happen when the protected individual cannot
5 present direct proof of the Canadian domestic violence protection order. In that circumstance,
6 law enforcement officers are expected to obtain information from all available sources, including
7 interviewing the parties and contacting other law enforcement agencies, to determine whether a
8 valid protection order is in effect. If the officer finds, after considering the totality of the
9 circumstances, that there is probable cause to believe that a valid Canadian domestic violence
10 protection order exists and has been violated, he or she should enforce the order. This probable
11 cause determination must meet the constitutional standards for determining probable cause. If it
12 is later determined that no such order was in place or the order was otherwise unenforceable,
13 Section 6 provides immunity from criminal and civil liability to law enforcement agencies,
14 officers, or other state officials for actions taken in good faith.

15
16 Subsection (d) provides that if a law-enforcement officer discovers in the course of a
17 probable cause investigation that the respondent has not been notified of the issuance of or
18 served with an otherwise valid Canadian domestic violence protection order, the officer must
19 inform the respondent of the terms and conditions of the protection order and make a reasonable
20 effort to serve the order upon the respondent. Before contacting the respondent, the officer must
21 notify the protected individual and act only in a way consistent with the safety of the protected
22 individual. The respondent must be allowed a reasonable opportunity to comply with the order
23 before the order is enforced.

24
25 Subsection (e) requires law enforcement to inform the protected individual of local victim
26 services. In the re-authorization of the Violence against Women Act (VAWA), the act has
27 increased funding for programs that provide victim assistance. 42 U.S.C. § 3796gg.

28 29 **SECTION 4. ENFORCEMENT OF CANADIAN DOMESTIC VIOLENCE**

30 **PROTECTION ORDER BY TRIBUNAL.**

31 (a) A tribunal may issue an order enforcing a Canadian domestic violence protection
32 order on application of a person authorized by law of this state other than this [act] to seek
33 enforcement of a domestic protection order.

34 (b) In a proceeding to enforce a Canadian domestic violence protection order under this
35 section, the tribunal shall follow the procedures of this state for enforcement of a domestic
36 protection order.

37 (c) A Canadian domestic violence protection order for which enforcement is sought under

1 this section is enforceable if:

2 (1) the order identifies a protected individual and a respondent;

3 (2) the order is in effect;

4 (3) the issuing court had jurisdiction over the parties and the subject matter under
5 law applicable in the issuing court; and

6 (4) the order was issued after:

7 (A) the respondent was given reasonable notice and had an opportunity to
8 be heard before the court issued the order; or

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

12 (d) A Canadian domestic violence protection order valid on its face is prima facie
13 evidence of its enforceability under this section.

14 (e) A claim that a Canadian domestic violence protection order does not comply with
15 subsection (c) is an affirmative defense in a proceeding seeking enforcement of the order.

16 [(f) This section applies to enforcement of a provision of a Canadian domestic violence
17 protection order against a party to the order in which each party is a protected individual and
18 respondent only if:

19 (1) the party seeking enforcement of the order filed a pleading requesting the
20 order from the issuing court; and

21 (2) the court made specific findings that entitled the party to the enforcement
22 sought.]

1 **Legislative Note:** *Subsection (f) is optional. The Violence Against Women Act, 18 U.S.C. Section*
2 *2265(c), addresses the topic of mutual foreign protection orders, depriving the orders of full*
3 *faith and credit unless the orders have certain features. Subsection (f) similarly protects against*
4 *enforcement of mutual Canadian domestic violence protection orders. This type of order is not*
5 *currently issued in Canada.*

6 7 **Comment**

8
9 This section draws on § 3 of the Uniform Interstate Enforcement of Domestic-Violence
10 Protection Orders Act (UIEDVPOA). Subsection (a) addresses judicial enforcement of
11 provisions in Canadian domestic violence protection orders dealing with no contact. In limited
12 circumstances, the tribunals of enforcing states must enforce the specific terms of a Canadian
13 domestic violence protection order even if their law would not allow the relief in question. For
14 example, if the law of the issuing Canadian court allows protection orders to remain effective for
15 a longer period than is allowed by the enforcing state, the tribunal of the enforcing state should
16 enforce the order for the time specified in the order of the issuing court. In a proceeding to
17 enforce the substantive terms of the Canadian domestic violence protection order, however, the
18 tribunal of the enforcing state shall follow its own procedures.

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

27
28 Subsection (c) requires that, to be enforceable under this act, a Canadian domestic
29 violence protection order must be “in effect.” This provision includes orders that have been
30 modified; the modified order is the order currently in effect. While the act requires that a
31 Canadian domestic violence protection order identify the protected individual and respondent,
32 merely technical errors, such as an incorrect spelling of a name, should not preclude enforcement
33 of the order. The question of the enforceability of an order is a question of law for the court of
34 the enforcing state. Once an order is adjudged enforceable, the proceeding shall be governed by
35 the established 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 (c)(4). If, for example,
39 the respondent was not provided with reasonable notice and opportunity to be heard by the court
40 that issued the protection order, the enforcing tribunal may not enforce the order. Thus, the
41 cross-border enforcement of a valid Canadian domestic violence protection order, even without a
42 prior hearing, does not deprive the respondent of any rights to due process because the
43 respondent was provided with reasonable notice and opportunity to be heard when the order was
44 issued.

45
46 Subsection (f) addresses enforcement of mutual Canadian domestic violence protection

orders, orders which contain provisions protecting both the protected individual and the respondent even though one of the protected individuals had not filed a pleading requesting protection. The practice had developed in courts across this country, and the Violence against Women Act (VAWA) sought to discourage the practice by refusing to grant full faith and credit. 18 U.S.C. § 2265(c). The UIEDVPOA discouraged the practice in § 3(g) by refusing enforcement:

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.

UIEDVPOA, § 3(g). The alternative reflected in subsection (f) of this section similarly precludes a tribunal from enforcing provisions of a Canadian domestic violence protection protecting a party unless the party filed a pleading seeking a protection order and the issuing court made specific findings that the party was entitled to the requested relief. There is no indication that Canadian courts have issued “mutual protection orders” in the absence of pleadings seeking protection, however, and for this reason, some states may choose not to enact this subsection.

SECTION 5. REGISTRATION OF CANADIAN DOMESTIC VIOLENCE

PROTECTION ORDER.

Alternative A

(a) An individual may register a Canadian domestic violence protection order in this state. To register the order, the individual must present a copy of the order to:

(1) a [tribunal responsible for the registration of domestic protection orders]; or

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

(b) On receipt of a certified copy of a Canadian domestic violence protection order, the [tribunal responsible for the registration of domestic protection orders] shall register the order in accordance with this section.

(c) An individual registering a Canadian domestic violence protection order under this

1 section shall file an affidavit stating that, to the best of the individual's knowledge, the order is in
2 effect.

3 (d) After a Canadian domestic violence protection order is registered under this section,
4 the [responsible tribunal] shall provide the individual registering the Canadian order a certified
5 copy of the registered order.

6 (e) A Canadian domestic violence protection order registered under this section may be
7 entered in a state or federal registry of protection orders in accordance with applicable law.

8 (f) An inaccurate or expired Canadian domestic violence protection order may be
9 corrected or removed from the registry of protection orders maintained in this state in accordance
10 with law of this state other than this [act].

11 (g) [A fee may not be charged for the registration of a Canadian domestic violence
12 protection order.]

13 (h) Registration in this state or filing under law of this state other than this [act] of a
14 Canadian domestic violence protection order is not required for its enforcement under this [act].

15 **Alternative B**

16 (a) An individual may register a Canadian domestic violence protection order in this
17 state. To register the order, the individual must present a certified copy of the order to a [tribunal
18 responsible for the registration of domestic protection orders].

19 (b) Registration in this state or filing under law of this state other than this [act] of a
20 Canadian domestic violence protection order is not required for its enforcement under this [act].

21 **End of Alternatives**

22 **Legislative Note:** *A state should choose Alternative A if the state does not have an existing*
23 *system of registering domestic protection orders. A state should choose Alternative B if the state*
24 *has an existing system of registering domestic protection orders or prefers not to establish a*
25 *system. A state should insert the name of the tribunal responsible for registration of domestic*

1 *protection orders in the appropriate bracketed language in Alternative A or subsection 5(a) of*
2 *Alternative B. Subsection 5(g) of Alternative A reflects the policy choice to make registration of*
3 *Canadian domestic violence protection orders as easy as possible. If a state chooses not to*
4 *include the entirety of either alternative, the state should include the substance of subsection 5(h)*
5 *of Alternative A or subsection 5(b) of Alternative B.*

6 7 **Comment** 8

9 Both these alternatives draw on § 5 of the Uniform Interstate Enforcement of Domestic-
10 Violence Protection Orders Act (UIEDVPOA). While enforcement of a Canadian protective
11 order does not require registration, it is highly desirable that a state provides an optional
12 registration process. A registration system supplies law enforcement officers and agencies more
13 accurate information, more quickly, about both the existence and status of Canadian domestic
14 violence protection orders and their terms and conditions. An enforcing state may facilitate the
15 collection and dissemination of this information either by establishing a central registry or by
16 providing a process by which information regarding registered orders is distributed to law
17 enforcement officers and agencies across the state.
18

19 While law of this state other than this [act] governs management of state registries, an
20 enforcing state should strongly consider keeping these protection orders under seal when
21 implementing a registration system. The purpose of more effectively protecting victims of
22 domestic violence will be undermined if respondents can use the process of registration to locate
23 the very people who are trying to escape from them. In addition, the Violence Against Women
24 Act prohibits states that provide for the registration or filing of orders from notifying other states
25 of the registration or filing of the order without the permission of the individual registering or
26 filing the order. 18 U.S.C. § 2265(d). Subsection (a) provides that any individual, including a
27 potential respondent, may register a Canadian domestic violence protection order. Subsection (a)
28 also requires that a person seeking to register a Canadian domestic violence protection order
29 must present a certified copy of that order. The copy must be a writing on paper, thus exempting
30 this requirement from the provisions of the Uniform Electronic Transactions Act. If a state has
31 provided for e-filing of protection orders, then the state should take e-filing into account in this
32 subsection.
33

34 Although subsection (b) of Alternative A requires the tribunal to register a Canadian
35 domestic violence protection order, an individual who presents the tribunal with a Canadian
36 domestic violence protection order written in a language other than English should realize that
37 the tribunal may require that the order first be translated into English before the tribunal will
38 register the order.
39

40 Subsection (c) of Alternative A provides that if the state has registered orders that are no
41 longer in effect or are inaccurate, these orders must be removed from the registry or, in the case
42 of error, corrected. Each government's law regarding the management of records governs the
43 precise method of how state and federal registries manage their registries, including the deletion
44 of inaccurate information.
45

46 Subsections (d), (e), and (f) of Alternative A address post-registration scenarios.

1 Subsection (g) of Alternative A reflects a policy that seeks to make registration as easy as
2 possible.

3
4 Subsection (h) of Alternative A and subsection (b) of Alternative B make clear that if a
5 state either adopts its own process for the registration or filing of Canadian domestic violence
6 protection orders or adopts the process provided in this section, the state may not require the
7 registration or filing of a Canadian domestic violence protection order for enforcement.
8

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

15 **Comment**

16 This section, like § 6 of the Uniform Interstate Enforcement of Domestic-Violence
17 Protection Orders Act (UIEDVPOA), grants immunity from criminal or civil liability to states,
18 state and local governmental agencies, and all state and local government officials acting in their
19 official capacity for acts or omissions done in good faith in an effort to comply with the
20 provisions of this act. Refusing to enforce an order that was written in a language other than
21 English and for which no translation was available, for example, might be an example of a good
22 faith refusal to enforce.
23

24 Immunity for the enforcement of Canadian domestic violence protection orders does not
25 preclude state and local governments from using personnel and other internal sanctions in order
26 to prevent and punish actions that, in the absence of this immunity provision, would have
27 rendered the government agencies, officers, or officials civilly or criminally liable. Also, if it
28 wishes, a state may substitute its own immunity provisions, so long as law enforcement officers,
29 agencies, or other officials involved in the registration or enforcement of Canadian domestic
30 violence protection orders, under the immunity scheme chosen, are not dissuaded from enforcing
31 such orders because of the fear of potential liability.
32

33 **SECTION 7. OTHER REMEDIES.** A protected individual who seeks a remedy under
34 this [act] may seek other legal or equitable remedies against the respondent.

35 **Comment**

36 This section, like § 7 of the Uniform Interstate Enforcement of Domestic-Violence

1 Protection Orders Act (UIEDVPOA), clarifies that the protection orders enforced under the act
2 are not the only means of protection available to victims of domestic violence. Other legal
3 remedies, such as tort actions and criminal prosecution, are left undisturbed by this act.
4

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

8 **SECTION 9. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND**
9 **NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the Electronic
10 Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not
11 modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
12 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
13 Section 7003(b).

14 **SECTION 10. TRANSITION.** This [act] applies to a Canadian domestic violence
15 protection order issued before, on, or after [the effective date of this [act]] and to a continuing
16 action for enforcement of a Canadian domestic violence protection order commenced before, on,
17 or after [the effective date of this [act]]. A request for enforcement of a Canadian domestic
18 violence protection order made on or after [the effective date of this [act]] for a violation of the
19 order occurring before, on, or after [the effective date of this [act]] is governed by this [act].

20 **Comment**

21 The provisions of this act apply to all requests for enforcement of Canadian domestic
22 violence protection orders, both continuing and newly filed, made on or after its effective date.
23 In addition, the provisions of this act apply to the enforcement of Canadian domestic violence
24 protection orders issued before the effective date of this act and to requests for enforcement of
25 Canadian domestic violence protection orders in which the alleged violation took place before
26 the effective date of the act.
27

28 **[SECTION 11. SEVERABILITY.** If any provision of this [act] or its application to
29 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 ***Legislative Note:*** *Include this section only if this state lacks a general severability statute or a*
4 *decision by the highest court of this state stating a general rule of severability.*

5
6 **Comment**
7

8 One of main purposes of this [act] is to provide a mechanism for the cross-border
9 enforcement of Canadian domestic violence protection orders that does not rely on any federal
10 mandate. By enacting this [act], a state is exercising its independent authority to recognize and
11 enforce Canadian orders that the state would not otherwise be required to enforce under the
12 Constitution.

13
14 **SECTION 12. REPEALS; CONFORMING AMENDMENTS.**

15 (a)

16 (b)

17 (c)

18 ***Legislative Note:*** *The enacting jurisdiction should examine its statutes relating to issuing,*
19 *modifying, recognizing, and enforcing domestic and foreign protection orders and set forth in*
20 *this section necessary repeals and conforming amendments.*

21
22 **SECTION 13. EFFECTIVE DATE.** This [act] takes effect