

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

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

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By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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VIOLENCE PROTECTION ORDERS ACT**

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

Prefatory Note

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

Both the UECJDA and this act are part of state, federal, and international efforts to recognize domestic-violence protection orders across jurisdictions. The United States has been a part of these efforts since 1994 with the enactment of the Violence Against Women Act, or VAWA,¹ in which Congress required states to grant full faith and credit to the protection orders of other states.² Many states enacted legislation recognizing the domestic-violence orders of sister states,³ and in 2002, the Uniform Law Commission (ULC) approved the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act (UIEDVPOA), encouraging states to recognize and enforce the domestic-violence orders of other states.⁴ In 2011, the Uniform Law Conference of Canada (ULCC) approved the UECJDA, which provides for the recognition of foreign protection orders – including those of the United States – unless the foreign state of origin has been expressly excluded from the provisions of the act.

The Hague Conference on Private International Law is also studying the recognition of domestic-violence protection orders across jurisdictions. In March, 2012, the Conference issued the *Recognition and Enforcement of Foreign Civil Protection Orders: A Preliminary Note*. Through case studies based on actual incidents, the work illustrates the problems and dangers created in a world without cross-border recognition of domestic-violence protection orders. The note also summarizes national protection order regimes and describes proposed and existing models of cross-border recognition, including VAWA, the UIEDVPOA, and the UECJDA. In February, 2015, the Conference released more information comparing national regimes in *Recognition and Enforcement of Foreign Civil Protection Orders: Additional Statistical and Comparative Information on National Law*, which concludes by suggesting that the Experts’ 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].

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

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

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

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

- (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 with a certain distance of a specified place or location; or
- (d) engaging in molesting, annoying, harassing, or threatening conduct directed at a specified person.⁸

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

This act follows the approach of the UECJDA, recognizing and enforcing only the parts of the Canadian domestic-violence protection order requiring no contact directly or indirectly with a protected individual. Other Acts and conventions deal with issues of custody between countries, specifically, the UCCJEA and its 2013 amendments that implement the Hague

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.*

Convention on the Protection of Children. This act, like the UECJDA, pursues the narrower goal of addressing the emergency of threatened violence.

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

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

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

The act also provides uniform procedures for the cross-border enforcement of Canadian domestic-violence protection orders. The act envisions that the enforcement of Canadian domestic-violence 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, for example, by presenting a paper copy or accessing an electronic registry, the copy or registry conclusively establishes probable cause. If there is no such proof, the act nevertheless requires enforcement 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 individual against whom the order is enforced will have sufficient opportunity to 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.

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 the state and agents of the government acting in good faith.

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

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

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

SECTION 2. DEFINITIONS. In this [act]:

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

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

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

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

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

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

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

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

(5) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

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

(7) “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.

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

(9) “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.]

(10) “Tribunal” means a court, agency, or other entity authorized by law of this state other than this [act] to establish, enforce, or modify 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. By referring broadly to “civil proceeding,” the definition of “Canadian domestic-violence protection order” recognizes that no-contact provisions may appear in civil judgments and orders addressing topics other than domestic violence. The act, however, 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:

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

UIEDVPOA, §2(5). The act uses the word “domestic” in the phrase “domestic protection order” to help clarify that the proper tribunal to enforce Canadian domestic-violence protection orders is the local tribunal that issues orders relating to domestic or family violence. In this sense, “Canadian domestic-violence orders” are foreign orders that directly or indirectly provide for no contact while domestic protection orders are local orders that relate to domestic or family violence and enjoin violent or harassing acts by one individual against another individual.

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

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

Also, the act enforces the parts of a Canadian domestic-violence protection order that prohibit the respondent from “molesting, annoying, harassing, or engaging in threatening conduct *directed at a protected individual* (emphasis added).” The respondent may threaten a family pet, for example, as a way of harassing the protected individual. Under those circumstances, the Canadian domestic-violence protection order proscribes more than physical contact with a protected individual.

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

As explained in the prefatory note, this act provides for international recognition and enforcement of another country's protection orders, the first act in this country to do so. The UECJDA recognizes only the direct and indirect no-contact provisions of domestic protection orders from the United States and other countries, and this act takes a similarly limited approach to the recognition and enforcement of Canadian domestic-violence protection orders. The party who seeks the recognition and enforcement of a Canadian domestic-violence protection order may 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 terms of the Canadian domestic-violence protection order as if the terms were in an order of a tribunal. Presentation to a law-enforcement

officer of a certified copy of a Canadian domestic-violence protection order is not required for enforcement.

(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) If a record of a Canadian domestic-violence protection order is not presented as provided in subsection (b), a law-enforcement officer may consider other information in determining whether there is probable cause to believe that a valid Canadian domestic-violence protection order exists.

(d) If a law-enforcement officer determines that an otherwise valid Canadian domestic-violence protection order cannot be enforced because the respondent has not been notified of or served with the order, the officer shall notify the protected individual that the officer will make reasonable efforts to contact the respondent, consistent with the safety of the protected individual. After notice to the protected individual and consistent with the safety of the individual, the officer shall make a reasonable effort to inform the respondent of the order, notify the respondent of the terms of the order, provide a record of the order, if available, to the respondent, and allow the respondent a reasonable opportunity to comply with the order before the officer enforces the order.

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

Comment

This section draws on § 4 of the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act (UIEDVPOA). In this act, enforcement by law enforcement implements the act's core purpose. The enforcement procedures in subsections (a), (b), and (c) rely on the sound exercise of the judgment of law-enforcement officers to determine whether there exists

probable cause to believe that a valid Canadian domestic-violence 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 Canadian domestic-violence protection order.

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

This section applies with equal force to orders written in a language other than English. As of this date, the province of Quebec does not have stand-alone civil domestic-violence legislation for the purpose of issuing protection orders. See <http://www.justice.gc.ca/eng/cj-jp/fv-vf/laws-lois.html>. For this reason, there may be relatively few Canadian domestic-violence protection orders in a language other than English.

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

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

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

**SECTION 4. ENFORCEMENT OF CANADIAN DOMESTIC-VIOLENCE
PROTECTION ORDER BY TRIBUNAL.**

(a) A tribunal may issue an order enforcing or refusing to enforce a Canadian domestic-violence protection order on application of:

(1) a person authorized by law of this state other than this [act] to seek enforcement of a domestic-protection order; or

(2) a respondent.

(b) In a proceeding under subsection (a), the tribunal shall follow the procedures of this state for enforcement of a domestic protection order. An order entered under this section is limited to the enforcement of the terms of the Canadian domestic-violence protection order as described in Section 2(1).

(c) A Canadian domestic-violence protection order is enforceable under this section if:

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

(2) the order is valid and in effect;

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

(4) the order was issued after:

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

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

(d) A Canadian domestic-violence protection order valid on its face is prima facie

evidence of its enforceability under this section.

(e) A claim that a Canadian domestic-violence protection order does not comply with subsection (c) is an affirmative defense in a proceeding seeking enforcement of the order. If the tribunal determines that the order is not enforceable, the tribunal shall issue an order that the Canadian domestic-violence protection order is not enforceable under this section and Section 3 and may not be registered under Section 5.

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

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

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

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

Comment

This section draws on § 3 of the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act (UIEDVPOA) and provides for judicial enforcement of Canadian domestic-violence protection orders. Subsection (a) provides that any person authorized by the law of the enforcing state to seek enforcement of a domestic protection order may seek enforcement of a valid Canadian domestic-violence protection order in the enforcing state. This provision recognizes that states frequently authorize public agencies and officers, such as a local prosecutor, to bring enforcement actions on behalf of a protected individual. The act, however, in recognizing the importance of these agencies and officers, should not be interpreted to mean that states, and their agencies and officers, are required to bring these actions when possible.

Subsection (b) mandates the application of the tribunal's procedures for domestic protection orders in determining whether and how to enforce the Canadian domestic-violence

protection order. The subsection also provides that the tribunal may enforce only those provisions in Canadian domestic-violence protection orders dealing directly or indirectly with no contact. In limited circumstances, the tribunals of enforcing states must enforce the specific terms of a Canadian domestic-violence protection order even if their law would not allow the relief in question. For example, if the law of the issuing Canadian court allows protection orders to remain effective for a longer period than is allowed by the enforcing state, the tribunal of the enforcing state should enforce the order for the time specified in the order of the issuing court. In a proceeding to enforce the substantive terms of the Canadian domestic-violence protection order, however, the tribunal of the enforcing state shall follow its own procedures.

Subsection (c) requires that, to be enforceable under this act, a Canadian domestic-violence protection order must be “valid and in effect.” This provision includes orders that have been modified; the modified order is the valid order in effect. While the act requires that a Canadian domestic-violence protection order identify the protected individual and respondent, merely technical errors, such as an incorrect spelling of a name, should not preclude enforcement of the order. The question of the enforceability of an order is a question of law for the court of the enforcing state. Once an order is adjudged enforceable, the proceeding shall be governed by the established procedures of the enforcing state.

The respondent’s constitutional right to due process is protected by the opportunity to raise defenses in the enforcement proceeding, as provided in subsection (c)(4). If, for example, the respondent was not provided with reasonable notice and opportunity to be heard by the court that issued the protection order, the enforcing tribunal may not enforce the order. Thus, the cross-border enforcement of a valid Canadian domestic-violence protection order, even without a prior hearing, does not deprive the respondent of any rights to due process because the respondent was provided with reasonable notice and opportunity to be heard when the order was issued.

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 the respondent unless the respondent filed a written pleading seeking a protection order and the issuing court made specific findings that the individual 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 certified copy of the order to:

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

(b) On receipt of a certified copy of a Canadian domestic-violence protection order, the [tribunal or other agency 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 section shall file an affidavit stating that, to the best of the individual’s knowledge, the order is valid and in effect.

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

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

(f) An inaccurate, expired, or unenforceable Canadian domestic-violence protection order

may be corrected or removed from the registry of protection orders maintained in this state in accordance with law of this state other than this [act].

(g) [A fee may not be charged for the registration of a Canadian domestic-violence protection order under this section.

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

Alternative B

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

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

End of Alternatives

Legislative Note: *A state should choose Alternative A if the state does not have an existing system of registering domestic protection orders. A state should choose Alternative B if the state has an existing system of registering domestic protection orders or prefers not to establish a system. A state should insert the name of the tribunal responsible for registration of domestic protection orders in the appropriate bracketed language of Alternative A or subsection (a) of Alternative B. A state should insert subsection (g) language of Alternative A if the state does not charge fees for the registration of a Canadian domestic- violence protection order. If a state chooses not to include the entirety of either alternative, the state should include the substance of subsection (h) of Alternative A or subsection (b) of Alternative B.*

Comment

Both these alternatives draw on § 5 of the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act (UIEDVPOA). While enforcement of a Canadian protective order does not require registration, it is highly desirable that a state 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 Canadian domestic-violence protection orders and their terms and conditions. An enforcing state may facilitate the collection and dissemination of this information either by establishing a central registry or by providing a process by which information regarding registered orders is distributed to law

enforcement officers and agencies across the state.

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

Subsection (a) provides that any individual, including a potential respondent, may register a Canadian domestic-violence protection order. Subsection (a) also requires a person seeking to register a Canadian domestic-violence protection order to present a certified copy of that order. The copy must be a writing on paper, thus exempting this requirement from the provisions of the Uniform Electronic Transactions Act. If a state has provided for e-filing of protection orders, then the state should take e-filing into account in this subsection.

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

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

Subsection (g) reflects a policy that seeks to make registration as easy as possible. Subsection (h) makes clear that if a state either adopts its own process for the registration or filing of Canadian domestic-violence protection orders or adopts the process provided in this section, the state may not require the registration or filing of a Canadian domestic-violence protection order for enforcement.

SECTION 6. IMMUNITY. The state, state agency, local governmental agency, law-enforcement officer, prosecuting attorney, clerk of court, and state or local governmental official acting in an official capacity are immune from civil and criminal liability for an act or omission arising out of the [registration or] enforcement of a Canadian domestic-violence protection order or the detention or arrest of an alleged violator of a Canadian domestic-violence protection order

if the act or omission was a good faith effort to comply with this [act].

Comment

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

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

SECTION 7. OTHER REMEDIES. An individual who seeks a remedy under this [act] may seek other legal or equitable remedies.

Comment

This section, like § 7 of the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act (UIEDVPOA), clarifies that the protection orders enforced under the act are not the only means of protection available to victims of domestic violence. Other legal remedies, such as tort actions and criminal prosecution, are left undisturbed by this act.

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

SECTION 9. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize

electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

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

Comment

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

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

Legislative Note: *Include this section only if this state lacks a general severability statute or a decision by the highest court of this state stating a general rule of severability.*

Comment

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

SECTION 12. REPEALS; CONFORMING AMENDMENTS.

(a)

(b)

(c)

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

SECTION 13. EFFECTIVE DATE. This [act] takes effect