Prefatory Note and Comments to the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act

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UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC-VIOLENCE PROTECTION ORDERS ACT

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WITH PREFATORY NOTE AND COMMENTS

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UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC-VIOLENCE PROTECTION ORDERS ACT

(with Prefatory Note and Comments by Andrew C. Spiropoulos)*

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PREFATORY NOTE

I. Introduction

The Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act1 (“the Act”) provides a uniform mechanism for the

*Professor of Law, Oklahoma City University School of Law and Director, Center for the Study of State Constitutional Law and Government. I was the reporter for the Drafting Committee of the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act [hereafter the Drafting Committee] of the National Conference of Commissioners on Uniform State Laws [hereafter NCCUSL or the Conference]. The annotations published here are solely my work and are in no way attributable to NCCUSL. I, of course, thank the members of the Drafting Committee for their hard work and wisdom; I learned a great deal from each of them. I include in my thanks Wanda Williams Finnie, former Commissioner from New Jersey, and former member of the Drafting Committee. It is particularly appropriate in this publication to extend my special thanks to the two experts lent to us by the American Bar Association, Bette Garlow and Judge James Riehl. Without their assistance, our work would have been far more difficult. Finally, I thank my research assistant Rene Gish for her invaluable assistance in the preparation of these annotations and the Kerr Foundation for financially supporting this work.

1. As of July 1, 2001, the Act has been enacted in Montana (H.B. 213, enacted Apr. 12, 2001) and Texas (H.B. 919, enacted May 7, 2001). In 2001, the Act was introduced, in addition to Montana and Texas, in Alabama, California, Delaware, Illinois, Indiana, Kansas, Minnesota, Mississippi, North Dakota, South Dakota, West Virginia, and the District of Columbia. The Act was originally titled the Uniform
interstate enforcement of domestic-violence protection orders. The need for such a mechanism is founded on the widespread understanding that states have not consistently or effectively enforced domestic-violence protection orders issued by other states. The Act, therefore, has two main purposes. First, it defines the meaning of interstate enforcement in the context of the enforcement of domestic-violence protection orders. Second, it establishes uniform procedures for the effective interstate enforcement of domestic-violence protection orders.

Many states, recognizing the severity of the problems regarding the interstate enforcement of domestic-violence protection orders, have enacted legislation requiring their courts to enforce the domestic-violence protection orders of other states. Many of these statutes, however, while mandating enforcement, are either silent or ambiguous regarding several important questions that must be answered in order to establish an effective system for the interstate enforcement of these orders. The Congress of the United States, as well, has enacted legislation requiring interstate enforcement of domestic-violence protection orders, but this legislation is also silent or ambiguous regarding these important questions.

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Interstate Enforcement of Domestic Violence Orders Act. The NCCUSL Committee on Style [hereafter the Style Committee], led by the liaison to the Drafting Committee, Frank W. Daykin, recommended that the Committee request that the name of the Act be changed as it appeared from wording of the title that the Act was concerned with ordering domestic violence. At the NCCUSL Annual Meeting in July 2000, the NCCUSL Executive Committee approved the Committee's request to change the name of the Act to the Interstate Enforcement of Protection Orders Act. Shortly after this decision, however, the full Conference, reasoning that the Act only dealt with the enforcement of protection orders in the domestic violence context, voted to change the name of the Act to the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act. See Transcript of National Conference of Commissioners on Uniform State Laws July 29-30, 2000, at 1-2, 98-104 [hereafter NCCUSL 2000 Annual Meeting Transcript] (copy on file with author).


3. Two of the state interstate enforcement acts have purpose provisions. See Colo. Rev. Stat. § 18-6-803.8 (1); Idaho Code § 39-6302.

4. As of March 1, 2001, only six states had not enacted any specific legislation providing for the interstate enforcement of domestic-violence protection orders. They are: Georgia, Indiana, Kansas, Michigan, New Jersey, and South Dakota.

5. This legislation was passed as part of the Violence Against Women Act of 1994. The key provision is 18 U.S.C. § 2265 (2000) [hereafter "VAWA"], which directs all the states to give full faith and credit to sister-state protection orders. VAWA must be read in light of the definitional sections contained in 18 U.S.C. § 2266 (2000), amended by the Violence of Women Act of 2000, Pub. L. No. 106-386 § 1107, 114 Stat 1499 (2000) [hereinafter "the VAWA amendments"]). Perhaps the most significant development over the course of the approximately two years it took to draft the Act was the movement away from envisioning the Act as an implementation of VAWA to seeing it instead as an independent act of the states. The early versions of the Act were based largely on the exact language of VAWA. See July 1999 Draft of Act, §§ 1, 2, 4. (on
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First, many of the existing statutes do not sufficiently explain the core requirements of interstate enforcement of protection orders.\(^6\) For example, many of the state statutes, and the federal legislation, require courts and law enforcement officers to enforce the orders of other states as if they were the protection orders of the enforcing state.\(^7\) This provision, however, does not answer the question of whether state courts and officers are required to enforce provisions of foreign protection orders that would not be authorized by the law of the enforcing state. This question, and others, must be answered if there is to be effective uniform enforcement of protection orders. Second, many of the existing statutes do not specify the procedures state courts and officers must follow in enforcing foreign protection orders. For example, many of the statutes are silent on whether individuals seeking the enforcement of a protection order must register or file the order with the enforcing state before action can be taken on their behalf.\(^8\) This Act resolves the

file with author). The first version of the prefatory note to the Act, for example, stated that the need for the Act was "required by the recently enacted Federal Violence Against Women Act." The comment to the section of the Act defining the meaning of interstate enforcement stated that the section "implements the core purpose of the federal full faith and credit mandate of the Violence Against Women Act." See July 1999 Draft of Act, prefatory note, comments to § 2.

In contrast, the final version of the Act was drafted with an eye to distancing the Act from VAVA as much as possible. Over the course of drafting the Act, in my view, the Drafting Committee discovered that VAVA either did not resolve crucial issues necessary to interstate enforcement or that it did so in ways that appeared constitutionally questionable. In presenting the Act to the Conference, therefore, the Drafting Committee asked the Conference to view the Act as providing a remedy for the deficiencies of VAVA by ensuring uniform and effective enforcement of domestic-violence protection orders through a uniform mechanism independently adopted by the states. See NCCUSL 2000 ANNUAL MEETING TRANSCRIPT, supra note 2, at 6-7 (Statement of Andrew C. Spiropoulos, reporter).

6. Several of the state interstate enforcement statutes, for example, merely state that full faith and credit will be afforded to protection orders without any further guidance as to what this means. See DEL. CODE ANN. tit. 11, § 1217A; 720 ILL. COMPI. STAT. § 5/12-30; LA. REV. STAT. ANN. § 14.79(2); ME. REV. STAT. ANN. tit. 15, § 21(6); MO. REV. STAT. § 455.067(1); N.H. REV. STAT. ANN. § 173-B:13(III); N.M. STAT. ANN. § 40-13-6(D); OHIO REV. CODE ANN. § 2919.27; UTAH CODE ANN. § 30-6-12(1); WASH. REV. CODE § 26.52.020.

7. State statutes that rely on the simple VAVA formulation without explanation or further definition are: ALA. CODE § 30-5-4(h); ALASKA STAT. § 18.66.140(b) (if filed); ARIZ. REV. STAT. § 13-3602(R); ARK. Code Ann. § 9-15-302(a); CAL. FAM. CODE § 6380.5(c); COLO. REV. STAT. § 18-6-803.8(3); HAW. REV. STAT. § 586-21; IDAHO CODE § 39-6306(A); IOWA CODE § 236.19(3); MD. CODE ANN., FAM. LAW § 4-508.1(a); MASS. GEN. LAWS, ch 209A, § 5A; MISS. CODE ANN. § 93-21-16(1); NEB. REV. STAT. §§ 28-311.10(l)(harassment), 42-931(1) (protection orders); NEV. REV. STAT. § 33.090(1); N.Y. DOM. REL. LAW § 240(3-c); N.C. GEN. STAT. § 50B-4(d); N.D. CENT. CODE § 14-07.1-02.2; OR. REV. STAT. § 24.190(2)(a); 23 PA. CONS. STAT. § 6118(a); R.I. GEN. LAWS § 12-29-1.1(a); TENN. CODE ANN. § 36-3-622(a); VT. STAT. ANN. tit.15, § 1508(a); VA. CODE ANN. §§ 16.1-279.1(E) (protection orders), 19.2-152.10(E) (stalking); WYO. STAT. ANN. § 35-21-109(c).

8. Six states, for example, appear to require some form of registration for full en-
issues left unanswered in existing legislation and provides a uniform scheme for enforcement of these orders.

II. The Requirements of Interstate Enforcement

The Act first defines what it means to accord interstate enforcement to domestic-violence protection orders. These orders must be enforced if the issuing tribunals had jurisdiction over both the parties and the matter under the law of the issuing state and if the individuals against whom the order is enforced were given reasonable notice and had an opportunity to be heard consistent with the right to due process. If the order was obtained ex parte, this notice and opportunity to be heard must be provided within a reasonable time.

The Act makes it clear that all the terms of the orders of the issuing states must be enforced, including terms that provide relief that the courts of the enforcing state would lack power to provide. The Act also provides that all protection orders that both recognize the standing of the protected individual to seek enforcement of the order and satisfy the criteria of validity established by the Act must be enforced. In addition, provisions of protection orders governing custody and visitation matters are enforceable under this Act. Terms that concern support are not. The terms of mutual protection orders which favor a respondent are also not enforceable if they were not issued in response to a written pleading filed by the respondent and if the issuing tribunal did not make specific findings in favor of the respondent.

III. Enforcement Procedures

The Act also provides uniform procedures for the interstate enforcement of domestic-violence protection orders. The Act envisions that

forcement. ALASKA STAT. § 18.66.140; ARK. CODE. ANN. § 9-15-302(d); CONN. GEN. STAT. § 46b-15a(a),(b); KY. REV. STAT. ANN. §§ 403.7521, 403.7524, 403.7527; MD. CODE ANN., FAM. LAW § 4-508.1; 23 PA. CONS. STAT. § 6118(a). Twenty-four states, on the other hand, have established an optional registration process for foreign protection orders. COLO. REV. STAT. § 18-6-803.8; FLA. STAT. ANN. § 741.351(3); HAW. REV. STAT. § 582-23; IDAHO CODE § 39-3606; 750 ILL. COMP. STAT. § 60/225; IOWA CODE § 236.19(2); MO. REV. STAT. § 455.067(2); NEV. REV. STAT. § 33.090(12); N.H. REV. STAT. ANN. § 173-B:13(IV); N.Y. DOM. REL. LAW § 240(3-c); N.C. GEN. STAT. § 50B-4(d); N.D. CENT. CODE § 14.07.1-02.2(3); OHIO REV. CODE ANN. § 2919.272(B); OR. REV. STAT. § 24.190(6); R.I. GEN. LAWS § 12-29-1.1(b); S.C. CODE ANN. § 20-4-140(D); TENN. CODE ANN. § 36-3-622(c); UTAH CODE ANN. § 30-6-12(2); VT. STAT. ANN. tit.15, § 1108; VA. CODE ANN. §§ 16.1-279.1(E), 19.2-152.10(E); WASH. REV. CODE § 26.52.030; W. VA. CODE § 48-2A-12(2); WIS. STAT. § 806.247(2)(b); WYO. STAT. ANN. § 35-21-111.
the enforcement of foreign protection orders will require law enforce-
ment officers of enforcing states to rely on probable cause judgments
that a valid order exists and has been violated. The Act, however, pro-
vides that if a protected individual can provide direct proof of the ex-
istence of a facially valid order, by, for example, presenting a paper
copy or through an electronic registry, probable cause is conclusively
established. If no such proof is forthcoming, the Act provides that if
officers, relying on the totality of the circumstances, determine that
there is probable cause to believe that a valid protection order exists
and has been violated, the order will be enforced. The individual against
whom the order is enforced will have sufficient opportunity to dem-
onstrate that the order is invalid when the case is brought before the
enforcing tribunal. Law enforcement officers, as well as other govern-
ment agents, will be encouraged to rely on probable cause judgments
by the Act’s inclusion of an immunity provision, protecting agents of
the government acting in good faith.

The Act does not require individuals seeking the enforcement of a
protection order to register or file the order with the enforcing state.
The Act does, however, include an optional registration process. This
process permits individuals to register a protection order by presenting
a copy of the order to a responsible state agency or any state officer or
agency. The copy presented must be certified by the issuing state. The
purpose of these procedures is to make it as easy as possible for the
protected individual to register the protection order and thus facilitate
its enforcement.
UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC-VIOLENCE PROTECTION ORDERS ACT

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

SECTION 2. DEFINITIONS. In this [Act]:

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

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

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

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

(5) “Protection order” means an injunction or other order, issued by a tribunal under the domestic-violence or family-violence 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.

(6) “Respondent” means the individual against whom enforcement of a protection order is sought.

(7) “State” means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders.

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

COMMENTS

The term “protection order” includes only those orders issued under the domestic-violence or family-violence laws of the issuing state. Protection

9. The use of the term “protection order” was the cause of some debate between the Drafting and the Style Committees. The Style Committee, always the advocate of grammatical rectitude, strongly advocated use of the word “protective.” The Drafting Committee, while recognizing the strength of the Style Committee’s argument, nevertheless prevailed upon that Committee to agree to employ the more familiar term. The Style Committee graciously agreed. Texas, in its enactment of the Act, uses the word “protective.”

10. This distinction is also made in VAWA, which defines a “spouse or intimate partner” as a person protected under the “domestic or family violence laws of the State or tribal jurisdiction.” 18 U.S.C. § 2266(7). The distinction is also made by one of the states. S.C. CODE ANN. § 20-4-140(A).
orders issued outside of the domestic or family violence context are not enforceable under the provisions of this Act.\textsuperscript{11} The scope of enforceable protection orders is further limited by the provisions of Section 3(b) and (d). In addition, the term “protection order” includes an order modifying a previous order. Thus, a modified order is enforceable under the Act, in the same manner as a newly issued order.

The terms “protected individual” and “respondent” refer to the relief sought by the parties in the action brought in the enforcing state. The Act recognizes that neither the protected individual nor the respondent may have been a named party in the action brought in the issuing state; the Act applies to individuals meeting the definition of protected individual or respondent whether they were named in the caption or the body of the protection order. The Act also recognizes that the parties may have been called by different terms, e.g., plaintiff, defendant, petitioner, in the issuing state.

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

The Violence Against Women Act, 18 U.S.C. § 2265, requires that states accord full faith and credit to tribal protection orders.\textsuperscript{12} Like state orders, tribal orders must satisfy the criteria for validity, as defined in Section 2(e), in order to qualify for interstate enforcement across state or tribal lines.

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

\textbf{SECTION 3. JUDICIAL ENFORCEMENT OF ORDER.}

(a) A person authorized by the law of this State to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of this State. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of this State would lack power to provide but for this section. The tribunal shall

\textsuperscript{11} The Drafting Committee added the language limiting the Act to the enforcement of protection orders only in the domestic violence context after the February 2000 meeting in Houston, Texas. The Drafting Committee interpreted the scope of its project as to provide for the enforcement only of domestic-violence protection orders, not to provide an enforcement mechanism for all protection orders. This distinction drew some discussion from the Conference, as some commissioners expressed concern that in some states domestic-violence protection orders would be issued in criminal courts and that some judges would not enforce these orders because they were issued under the criminal, not domestic or family violence, laws of the state. The Drafting Committee responded that attorneys representing victims of abuse in these circumstances should be able to make a colorable argument that, in jurisdictions where orders protecting victims of domestic violence are issued under the general criminal law, these orders are issued under the law that serves as the domestic or family violence of that state. The Drafting Committee acknowledged the possibility that some judges might misunderstand the intent of the Act, but the need to limit enforcement to domestic-violence protection orders justified the risk of judicial error in this context. See NCCUSL 2000 ANNUAL MEETING TRANSCRIPT, supra note 2, at 17-18, 22-23, 105-06.

\textsuperscript{12} Wisconsin law specifically provides that foreign protection orders issued by tribal courts within the state will receive full faith and credit. WIS. STAT. § 806.245(6).
enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this State for the enforcement of protection orders.

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

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

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

(e) A foreign protection order is valid if it:
   (1) identifies the protected individual and the respondent;
   (2) is currently in effect;
   (3) was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing State; and
   (4) was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and had an opportunity to be heard within a reasonable time after the order was issued, consistent with the rights of the respondent to due process.

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

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

(h) 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.

COMMENTS

Subsection (a) implements the core purpose of the Act. Effective intestate enforcement of protection orders is founded on the principle that enforcing states must enforce all the substantive terms of a foreign protection order,
including terms that provide relief that a tribunal of the enforcing state would lack power to provide, but for this Act. This provision means that the tribunals of enforcing states must enforce the specific terms of a foreign protection order even if their state law would not allow the relief in question. For example, if the law of the issuing state provides that a court may issue a protection order including terms that concern the possession of property, e.g., an order giving the protected individual possession of the family automobile, but the law of the enforcing state does not authorize such substantive relief, the tribunal of the enforcing state must enforce the order in its entirety. To give another example, if the law of the issuing state allows protection orders to

13. This provision produced much controversy both within the Drafting Committee and the Conference, but less regarding the policy decision involved, than for the specific wording. The Drafting Committee, as a whole, never wavered in its support for the concept that the enforcing state should enforce each provision of the issuing state’s order, whether the enforcing state’s law provided for that relief or not. The problem arose with how to state this principle. The Drafting Committee particularly struggled with this language in the early versions of the Act, which relied on the VAWA formulation that tribunals of enforcing states “shall enforce the terms of a valid foreign protective order as if the order were issued by a tribunal of this State.” July 1999 Draft of Act, § 2(a) (on file with author). This problem was exacerbated by the structure of the Act in its earlier incarnations, particularly the failure to provide separate sections for judicial and nonjudicial enforcement (meaning enforcement by law enforcement officers). See July 1999 Draft of Act, § 2 (on file with author). The concern raised by several members of the Drafting Committee and members of the Conference during the Act’s first reading in July 1999 was that law enforcement officers, who would have access only to the language of the Act and not its explanatory comments, would not understand what it means to enforce an order as if it is one of their own state. The natural reading suggests, it was argued, that the enforcing official should only provide the relief the enforcing state allows.

The Drafting Committee experimented with different wording. In one draft, for example, the Act read that the tribunal of the enforcing state “shall enforce the terms of a valid foreign protection order as if the order were issued by a tribunal of this State, including terms that provide relief that would not be allowed by the law of this State.” February 2000 Draft of Act, § 3(a) (on file with author.) The version first considered for approval at the 2000 Annual Meeting read, “A tribunal of this State shall enforce a valid foreign protection order, including terms that provide relief that a tribunal of this State may not provide.” July 2000 Draft of Act, § 2(a). Several commissioners, during consideration by the Committee of the Whole at the Annual Meeting, however, found this language ambiguous, leading to a vote to suspend discussion so that the Drafting Committee could draft new language to satisfy the Conference. NCCUSL 2000 ANNUAL MEETING TRANSCRIPT, supra note 1, at 110-25. After meeting with several of the concerned commissioners, in reliance upon their suggestions, the Drafting Committee submitted the adopted language. Drafting Committee Amendment to Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act, July 29, 2000, Afternoon Session (on file with author).

14. There are a few state statutes that attempt to clarify the meaning of enforcing foreign protection orders as if they were the order of the enforcing state. Fla. Stat. Ann. § 741.315(4)(a) (stating that “a law enforcement officer shall assist in enforcement of all its terms, pursuant to federal law.”); Ky. Rev. Stat. Ann. § 403.7527 (calls for the enforcement, once, one should note, authenticated, of all provisions of a foreign protection order “including provisions which grant relief not available in this state.”); Okla. Stat. tit. 22, § 60.12(A) (provides for rebuttable presumption of validity of foreign order even if the order “contains provisions that could not be contained in a protective order issued by an Oklahoma court.”); S.C. Code Ann. § 20-4-140(A) (provides relief in foreign protection order “even if relief granted would not be available under the laws of this state”.

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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 state. In a proceeding to enforce the substantive terms of the foreign protection order, however, the court of the enforcing state shall follow its own procedures.15

Subsection (a) provides that any person authorized by the law of the enforcing state to seek enforcement of a protection order may seek enforcement of a valid foreign 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. This subsection further provides that only protection orders that were issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection can be enforced under this Act; orders issued sua sponte are not enforceable under this Act.

Subsection (b) addresses the problem of the enforcement of protection orders issued by criminal courts.16 While it is not the purpose of this section to surpass the constitutional restraints against states enforcing the criminal laws

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15. One of the most difficult problems the Drafting Committee faced was making clear that the Act calls for enforcing the substantive terms of the issuing state’s order while employing the enforcement procedures and remedial scheme of the enforcing state. During most of the work on the Act, the consensus of the Drafting Committee was that the language derived from VAWA that the enforcing state would enforce the foreign protection order as if it were its own order would inform enforcing states that they should enforce foreign orders using their own rules and procedures. Indeed, when this language was removed from the Act before the second reading, the Drafting Committee, in response to the Conference’s concerns regarding the procedure-substance problem, restored the “as if it were the order of this state” language. Drafting Committee Amendments to Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act, July 29, 2000, Morning Session (on file with author). This language, however, was later removed in order to clarify the core meaning of full faith and credit. See supra note 13. After consideration by the Conference, however, the Drafting Committee, in conjunction with the Style Committee, considered the question sufficiently important that it added the last sentence of § 3(a) of the Act, providing that “In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this State for the enforcement of protection orders.”

16. A scant number of states have grappled with this question in their current statutes. See HAW. REV. STAT. § 586-24; IOWA CODE § 236.19 (stating that foreign orders should be enforced “in the same manner”); KY. REV. STAT. ANN. § 403.7524(3) (enforce “in the same manner”); N.D. CENT. CODE § 14-071-02.2(3) (make arrests for violation of an order in the same manner); UTAH CODE ANN. § 30-6-12 (use the same penalties). One state, in its attempt to clarify, actually makes the situation murkier. NEV. REV. STAT § 33.090(4) (providing that foreign orders must be given the “same effect and must be enforced in the same manner” as a state order).

16. In their current statutes, the overwhelming majority of states have not directly addressed the question of under which circumstances foreign protection orders issued by criminal courts are entitled to enforcement. An exception is the law of Iowa which provides for enforcement of “an order that establishes conditions of release or is a protective order or sentencing order in a criminal prosecution arising from a domestic abuse assault as if it had been entered in Iowa.”). IOWA CODE § 236.19(1). It is the enforcement of precisely these kinds of orders that the Drafting Committee thought problematic.
of other states or to disturb the normal process of interstate criminal law enforcement, the Act is designed to facilitate the enforcement of orders issued by states which allow the equivalent of civil protection orders to be issued by a criminal court. The principle of law governing the distinction between a criminal and a civil law, as articulated by the Supreme Court of the United States in *Huntington v. Asbill*,17 is that a criminal law vindicates, through punishment, a harm against the public, while a civil law provides a remedy to the individual injured by the wrongful acts of another. A civil protection order, therefore, is one that provides a remedy to an individual fearing harm from another individual; a criminal protection order is one that provides a remedy to the public as a whole, because a public, not an individual, wrong is involved.

The Act seeks, and is constitutionally authorized, only to provide a mechanism for the enforcement of civil protection orders; therefore, the Act only provides for the interstate enforcement of protection orders if the order of the issuing state recognizes the standing of a protected individual to seek enforcement of the order. Thus, orders recognizing this standing may be enforced even if they are issued by a criminal court because they operate as civil orders.

If, on the other hand, the protection order may only be enforced by criminal sanctions upon the request of the state, then it does not qualify for enforcement under this Act.18 For example, orders issued by criminal courts that provide

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17. 46 U.S. 657 (1892).
18. The Drafting Committee maintained a strong consensus throughout its deliberations that there were potentially grave constitutional problems with the unlimited interstate enforcement of orders issued by criminal courts. In the early drafts of the Act, the need for courts to adhere to these limits was expressed only in the comments to the Act. See July 1999 Draft of the Act, comments to § 1 (on file with author). After the first reading, however, at the NCCUSL 1999 Annual Meeting, in which several commissioners raised concerns about the enforcement of orders issued by criminal courts, the Drafting Committee, at its September 1999 meeting in Dallas, Texas, concluded that the language of the Act itself must both provide for enforcement of orders issued by criminal courts that are, to all intents and purposes, the equivalent of a civil protection order, while denying enforcement to orders that are purely criminal in nature. At that time, the Drafting Committee decided upon a rule based on whether the protected individual possessed standing to enforce the order.

Many of the leading authorities in the fight against domestic violence have expressed opposition to this limitation on the enforcement of orders issued by criminal courts. They contend that such a limit is contrary to VAWA. For example, Bonnie J. Campbell, then head of the Violence Against Women Office of the United States Department of Justice wrote the reporter that "Neither the federal law nor the legislative history suggests that Congress intended to require enforcement of criminal orders only when a criminal court grants standing to the protected individual to seek enforcement of the order. Creating a new and more restrictive standard in this Act undermines both the legislative intent in enacting VAWA and the ability of victims to obtain relief when offenders violate criminal court orders issued to protect victims." Letter to Andrew C. Spiropoulos from Bonnie J. Campbell, May 10, 2000 (on file with author).

The position of the Drafting Committee was both the language of VAWA and the absence of any relevant legislative history creates a large ambiguity that the Act was designed, in part, to resolve. The best way to resolve this ambiguity, the Committee concluded, was to respect the language of VAWA by providing for the enforcement of some criminal orders, while not disturbing the underlying edifice of interstate criminal law enforcement. It is precisely to resolve these kinds of difficult interstate coordination problems that the NCCUSL process exists and thrives. It must be noted, however, that the Act, as enacted by Texas, does not contain this provision.
for the revocation of bail, probation, or parole upon motion by the state will not qualify for enforcement under this Act. As several states have already done, enforcing states may, and are encouraged, to enact and enforce a separate criminal law providing for the prosecution of individuals who violate a foreign protection order, including, if the state so chooses, the terms of a criminal order. In addition, the respondent may have violated other criminal laws of the enforcing state; the enforcing state may, of course, prosecute the respondent for these violations.

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

Subsection (d) provides that orders or provisions of protection orders governing support are not enforceable under this Act; provisions of these orders should be enforced using the process provided in the specific laws governing the issuance, modification, and enforcement of these orders, including, but not limited to, the Uniform Interstate Family Support Act (UIFSA). UIFSA, which has been adopted by every state, establishes a comprehensive and effective statutory scheme for the enforcement of support orders. Subsections (c) and (d) are consistent with the Federal Violence Against Women Act (VAWA), which provides that support or custody orders issued pursuant to state divorce or child custody laws are not to be treated as protection orders subject to interstate enforcement.

19. Examples of state statutes that establish such a crime include: DEL. CODE ANN. tit.11, § 1217A; 750; ILL. COMP. STAT. § 60/223; ME. REV. STAT. ANN. tit. 15, § 321 (6); MASS. GEN. LAWS ch.209, § 7; MINN. STAT. § 518B.01(14)(b); N.H. REV. STAT. ANN. § 173-B:9(III); N.C. GEN. STAT. § 50B-4.1(a); OHIO REV. CODE ANN. § 2919.27(A)(2); OKLA. STAT. tit. 22, § 60.6; S.C. CODE ANN. § 16-25-50; WASH. REV. CODE § 26.52.070(1); WYO. STAT. ANN. § 6-4-404(a).

20. One state appears to clearly exclude the enforcement of any custody provisions of protection orders. FLA. STAT. ANN. § 7413.315(4)(a) (excluding both the enforcement of custody and support provisions).


22. The question of the enforcement of support orders presented the Drafting Committee with another difficult question of statutory and doctrinal coordination and, probably not coincidentally, has drawn severe criticism from advocates of increased protection from domestic violence. The Drafting Committee, without much, if any, dissent from the Conference, concluded that there was a significant difference between the enforcement of custody orders and support orders. Apart from the obviously greater importance of the former to personal safety, the coordination problems also present
Subsection (e) requires that, to be valid for the purpose of enforcement under this Act, a foreign protection order must be "currently in effect." This provision includes orders that have been modified; the modified order is the one currently in effect. While the Act requires that a foreign protection order, to be valid, 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 validity of an order is a question of law for the court of the enforcing state. Once an order is adjudged valid, 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 (g). If, for example, the respondent was not provided with reasonable notice and opportunity to be heard by the tribunal of the state issuing the protection order, the enforcing tribunal may not enforce the order. Thus, the interstate enforcement of a valid foreign protection order, even without a prior

themselves differently. An order of support, because one seeks to obtain something from someone, requires procedural protections and involves processes different from an order of custody, which asks only that someone leave another alone. The only way to ensure that proper legal process is followed is to require that all claims for support proceed under the exclusive legal mechanism designed to resolve such claims, UIFSA. The protection advocates oppose this position vehemently. To quote one example, Bonnie J. Campbell, former head of the Violence Against Women Office of the United States Department of Justice, wrote the reporter that the Act "creates an unnecessary distinction between child support and child custody provisions within protection orders... Temporary child support provisions within protection orders lessen the likelihood that victims of domestic violence will be compelled to return to their abusers in order to feed their children. States include both types of relief in protection order statutes because such relief enables victims of domestic violence and their children to survive apart from abusers." Letter to Andrew C. Spiropoulos from Bonnie J. Campbell, May 10, 2000 (on file with author).

The arguments of the advocates are strengthened by recent amendments to VAWA. See 18 U.S.C. § 2266 (2000), amended by The Violence of Women Act of 2000, Pub. L. No. 106-386, § 1107, 114 STAT 1499 (2000). In this provision, at the behest of the advocates, Congress revised the definition of protection order to exclude only a support or child custody order issued pursuant to state divorce and child custody laws, while stating that protection orders, including, one surmises, provisions that deal with custody and support, should be enforced to the extent states are required to provide full faith and credit under other federal law. Indeed, the Texas Legislature revised the Act in exactly this fashion. See Tex. H.B. 919, supra note 1, § 2 (stating "A tribunal of this state may enforce a provision of the foreign protective order relating to child support if the order was issued in accordance with the jurisdictional requirements of [state law] and the federal Full Faith and Credit for Child Support Orders Act... "). While this provision was adopted after the approval of the Act by the Conference (but before the final comments were completed), the position of the Drafting Committee is still tenable. The new federal provision does little to resolve the coordination problem. It can be argued that the enforcement of any support order issued by a state court must be governed by UIFSA and, thus, any support order is issued pursuant to UIFSA and not a state law governing divorce. As a matter of policy, it is nonsensical to suggest that the Act can provide a ground for enforcement of a support order independent of the act adopted by each state for the purpose of determining interstate support obligations. If Congress meant to provide an avenue to avoid the provisions of UIFSA, it should have said so clearly—which it certainly did not. Given this continued ambiguity, the best way to resolve this question is to conclude that support provisions within protection orders can only be enforced when they comply with the provisions of UIFSA are satisfied.
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.

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

In addition, in recent years, particularly with regard to the enforcement of domestic relations orders, the federal government has employed the power granted to it by Article IV, Section 1 of the Constitution of the United States to prescribe the manner in which states give full faith and credit to the acts, records, and proceedings of other states to require states to enforce foreign orders in circumstances in which states have traditionally been reluctant to render such enforcement. For example, the PKPA\(^{23}\) requires greater interstate enforcement of child custody orders and the federal Personal Responsibility and Work Opportunity Reconciliation Act,\(^{24}\) requires that states, in order to facilitate the enforcement of support orders, adopt the provisions of the UIFSA. The VAWA extends the principle of these laws to the subject of the interstate enforcement of domestic-violence protection orders.

Subsection (h), adapted from the VAWA,\(^{25}\) addresses the enforcement of mutual foreign protection orders, which contain provisions protecting both the protected individual and the respondent.\(^{26}\) Provisions of a mutual foreign protection order issued in favor of the respondent will not be enforced without proof that the respondent filed a written pleading seeking a protection order.

\(^{23}\) 28 U.S.C. § 1738A.


\(^{26}\) The Drafting Committee quite early resolved that it would adopt the VAWA approach to this issue, but with full knowledge, as at least one commissioner argued, that placing a burden on the respondent in an enforcement proceeding to produce additional proof of the validity of the order protecting that party while not requiring the petitioner to do the same is facially unequal and possibly unfair. The Drafting Committee adopted the VAWA approach because, as it heard from almost all the outside advisors venturing an opinion, it concluded that a disproportionate amount of mutual protection orders in reality arise in situations where only one party is abused and seeks protection. Courts too often, in this view, issue mutual protection orders because they do not critically examine the situation before them. The existence—and persistence—of this problem justifies the inequality of treatment between the parties. NCCUSL 2000 ANNUAL MEETING TRANSCRIPT, supra note 1, at 26-31. Both the Drafting and Style Committees also did not appreciate the drafting of Congress, hence explaining the change in wording from VAWA. Perhaps both of these problems explain why only ten of the current state statutes contain such a provision. Ariz. Rev. Stat. § 13-3602(R)(3); Ark. Code Ann. § 9-15-302(c); Neb. Rev. Stat. §§ 28-311.10(2)(c), 42-931(c); Nev. Rev. Stat. § 33.090(5); N.H. Rev. Stat. Ann. § 173-B:13(VII); N.M. Stat. Ann. § 40-13-6(D); N.Y. Dom. Rel. Law § 24(3-c)(a); S.C. Code Ann. § 20-4-140(C); Tenn. Code Ann. § 36-3-622(d); Wis. Stat. § 806.247(b).
If a respondent can prove that he or she made a specific request for relief and that the issuing tribunal made specific findings that the respondent was entitled to the requested relief, the protection orders will be enforced against the protected individual.

In order to facilitate the interstate enforcement of foreign protection orders, states should strongly consider requiring tribunals that issue protection orders to state clearly that these orders are entitled to interstate enforcement under both federal and state law. Such enforcement would also be greatly facilitated if issuing states provided each protected individual with a certified copy of the protection order. In addition, states should consider adopting a standard certification or confirmation form stating the protection order issued by their tribunals satisfies the criteria of validity articulated in subsection (c), thus qualifying the protection order for interstate enforcement. Use of the following certification form is recommended. [See page 222.]

SECTION 4. NONJUDICIAL ENFORCEMENT OF ORDER.

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

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

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

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

Certification of Protection/Restraining Order

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

The order is: [ ] a civil protection/restraining order

OR [ ] a criminal protection/restraining order, that recognizes the standing of the plaintiff to seek enforcement of the order

It is further certified that:
(a) the issuing court determined that it had jurisdiction over the parties and the subject matter under the laws of ________________ (state or Indian tribe).

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

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

For custody and visitation orders:
the order was issued in accordance with the requirements of the Uniform Child Custody Jurisdiction Act or the Uniform Child Custody Jurisdiction and Enforcement Act of this state/territory and is consistent with the provisions of the Parental Kidnapping Prevention Act. 28 U.S.C. § 1738A.

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

Signature of Clerk of Court or other authorized official:
Judicial District _____________ Address: __________________________________________
Phone: ______________ Fax: ______________ Date: ______________

Seal:
COMMENTS

The enforcement procedures in subsection (a) and (b) rely on the sound exercise of the judgment of law enforcement officers to determine whether there exists probable cause to believe that a valid foreign protection order exists and has been violated. These procedures anticipate that there will be many instances in which the protected individual does not have, or cannot, under the circumstances, produce a paper copy of the foreign protection order. Subsection (a) establishes a per se rule for determining probable cause of the existence of an order. If the protected individual presents, whether by providing a paper copy (which need not be certified) of a protection order or through an electronic medium, such as access to a state registry of orders, proof of a facially valid order, the order should be enforced. In determining whether there is proof of a facially valid order, a law enforcement officer, where possible, may, and, indeed, should, search, using an electronic or other medium, a state or federal registry of orders.

Subsection (b) concerns the circumstance in which the protected individual cannot present direct proof of the protection order. In this situation, 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 there is a valid protection order in effect. If the officer finds, after considering the totality of the circumstances, that there is probable cause to believe that a valid foreign protection order exists and has been violated, he or she should enforce the order.28 This probable cause determination must meet the constitutional standards for determining probable cause.29 If it is later determined that no such order was in place or the order was otherwise unenforceable, law enforcement agencies, officers, or other state officials will be protected by the immunity provision of Section 6 for actions taken in good faith.

Subsection (c) 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 foreign protection order, the officer must then inform the respondent of the terms and conditions of the protection order and make a reasonable effort to serve the order upon

28. Several of the current state statutes rely on a probable cause inquiry in enforcing protection orders. See, e.g., ME. REV. STAT. ANN. tit. 15, § 321(b); MD. CODE ANN., FAM. LAW § 4-508.1(b); MINN. STAT. § 518B.0114(e); WASH. REV. CODE § 26.52.070(2); WIS. STAT. ANN. § 813.128(2).

29. At the 2000 Annual Meeting, several commissioners were troubled by an earlier version of this subsection that provided that the officer, in determining probable cause, may “rely upon any relevant source of information.” July 2000 Draft of Act, § 3(b) (on file with author). The commissioners were concerned that the language was overly broad and would lead to findings of probable cause that would not meet constitutional standards. NCCUSL 2000 ANNUAL MEETING, supra note 1, at 65-69, 81-85. While the Drafting Committee believed that the existing language would have to be read in accordance with existing constitutional standards, it agreed to address the problem by amending the language to allow officers to consider “other information.” Drafting Committee Amendments to Interstate Enforcement of Domestic-Violence Protection Orders Act, July 29, 2000, Morning Session (on file with author).
the respondent. The respondent must be allowed a reasonable opportunity to comply with the order before the order is enforced.

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

[SECTION 5. REGISTRATION OF ORDER.]

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

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

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

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

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

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

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

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

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30. Some in the Conference also found the possibility that law enforcement officers would attempt service upon respondents in the field troubling. The particular problem that concerned these commissioners was how this provision would operate in states whose laws do not allow law enforcement officers to effect valid service. The Drafting Committee responded that all the Act requires is that an officer make “a reasonable effort” to serve the order; certainly, if state law forbidding the commission of certain acts by an officer prevents the performance of service, the officer can be said to have made a reasonable effort to serve. NCCUSL 2000 ANNUAL MEETING TRANSCRIPT, supra note 1, at 69-82.
COMMENTS

This section is bracketed because states may prefer to use their existing systems of registration to register foreign protection orders. While a protected individual is not required to register a valid foreign protection order in order for it to be enforced, it is highly desirable that states provide an optional registration process.31 A registration system supplies law enforcement officers and agencies more accurate information, more quickly, about both the existence and status of foreign protection orders and their terms and conditions. An enforcing state may facilitate the collection and dissemination of this information either by establishing a central registry or by providing a process by which information regarding registered orders is distributed to law enforcement officers and agencies across the state.

While the management of state registries is purely governed by state law, in implementing a registration system, however, enforcing states should strongly consider keeping these protection orders under seal. 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.32 In addition, the VAWA, as amended by the Violence Against Women Act of 2000,33 prohibits states that provide for the registration or filing of orders from, without the permission of the individual registering or filing the order, notifying other states of the registration or filing of the order.

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

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

If an order is registered under this Section, the individual who registered the order is expected to inform the enforcing state of any modifications to the registered protection order.

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

SECTION 6. IMMUNITY. This State or a local governmental agency, or a law enforcement officer, prosecuting attorney, clerk of court, or

31. See supra note 8 for a list of states that currently provide an optional registration system.
32. At least one state appears to require that such notice be given. Conn. Gen. Stat. § 46b-15a(c).
any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission was done in good faith in an effort to comply with this [Act].

COMMENTS

States may, if they wish, substitute their own immunity provisions, so long as law enforcement officers, agencies, or other officials involved in the registration or enforcement of foreign protection orders, under the immunity scheme chosen, are not dissuaded from enforcing such orders because of the fear of potential liability. This immunity provision includes states, state and local governmental agencies, and all state and local government officials acting in their official capacity in order to prevent those seeking the imposition of criminal and civil liability for acts or omissions done in good faith in an effort to comply with the provisions of this Act from circumventing this immunity provision. The necessity for a generous immunity provision for the enforcement of foreign 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.

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

COMMENTS

This section clarifies that the protection orders enforced under the Act are not the only means of protection available to victims of domestic violence.

34. The Drafting Committee, during its deliberations, discovered that many of the existing state immunity provisions were too limited to achieve the purposes of the Act. They too often, for example, protect only law enforcement officers, and not other responsible public officials, and only provide for freedom from civil and criminal liability in the case of the enforcement of the order, rather than provide for immunity in cases where officials decide that the order is unenforceable. See, e.g., ARIZ. REV. STAT. § 3-3602(R)(4) ("A peace officer who acts in good faith reliance on a protection order is not civilly or criminally liable for enforcing the protection order under this section."); COLO. REV. STAT. § 18-6-803.8(5) ("A peace officer who acts in good faith when enforcing a foreign protection order shall not be civilly or criminally liable."). The Drafting Committee, instead, using the Wisconsin immunity statute as a model, concluded that the Act should extend immunity broadly. WIS. STAT. § 818.128(3) ("A law enforcement officer, law enforcement agency, prosecuting attorney or clerk of circuit court is immune from civil and criminal liability for his acts or omissions arising out of a decision related to the filing of a foreign protection order or modification or to the detention or arrest of an alleged violator of a foreign protection order or modification if the act or omission is done in a good faith effort to comply with this section").
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. SEVERABILITY CLAUSE. 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.

COMMENTS

While the Congress of the United States has, in recent years, in the field of domestic relations, repeatedly invoked its power under the Full Faith and Credit Clause of Article IV of the Constitution to prescribe the manner in which states afford full faith and credit to the judgments of other states, the Supreme Court of the United States has not authoritatively decided whether Congress may use this power to require states to enforce foreign orders which are not final, and, thus, have not been traditionally afforded full faith and credit. It is, thus, possible that the provision of the Federal VAWA requiring interstate enforcement of domestic-violence protection orders will be held unconstitutional. One of main purposes of this Act is to provide a mechanism for the interstate enforcement of domestic-violence protection orders that does not rely on any federal mandate; by enacting this Act, states are exercising their independent authority to recognize and enforce foreign orders that they would not otherwise be required to enforce under the Constitution. Thus, if the VAWA is eventually found unconstitutional, interstate enforcement of domestic-violence protection orders should continue under this Act. Conversely, if the federal mandate is held to be constitutionally valid, it is possible that courts may conclude that, in some areas, the federal legislation requires greater enforcement than that provided by this Act. In this case, this subsection provides that if one or more provisions of the Act are declared invalid, those provisions of the Act that are severable from those declared invalid should be given effect.

SECTION 10. EFFECTIVE DATE. This [Act] takes effect on . . . .

SECTION 11. TRANSITIONAL PROVISION. This [Act] applies to protection orders issued before [the effective date of this [Act]] and to continuing actions for enforcement of foreign protection orders commenced before the effective date of this [Act]. A request for enforcement of a foreign protection order made on or after [the effective date

35. At least one state has provided that if VAWA is declared unconstitutional, its statute will be void. Fla. Stat. Ann. § 741.315(6).
of this [Act] for violations of a foreign protection order occurring before the effective date of this [Act] is governed by this [Act].

COMMENTS

The provisions of this Act apply to all requests for enforcement of foreign 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 foreign protection orders issued before the effective date of this Act and to requests for enforcement of foreign protection orders in which the alleged violation took place before the effective date of the Act.

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

VIOLENCE AGAINST WOMEN ACT

§ 2265. Full faith and credit given to protection orders
  (a) Full faith and credit. Any protection order issued that is consistent with subsection (b) of this section by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be afforded full faith and credit by the court of another State or Indian tribe (the enforcing State or Indian tribe) and enforced as if it were the order of the enforcing State or tribe.
  (b) Protection Order. A protection order issued by a State or tribal court is consistent with this subsection if:
      (1) such court has jurisdiction over the parties and matter under the law of such State or Indian tribe; and,
      (2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State or tribal law, and in any even within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.
  (c) Cross or counter petition. A protection order issued by a State or tribal court against one who has petitioned, filed, a complaint or otherwise has filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if:
      (1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or,
      (2) a cross or counter petition has been filed and the court did not make specific findings that each part was entitled to such an order.

  In this chapter:
      (1) BODILY INJURY. The term "bodily injury" means any act, except one done in self-defense, that results in physical injury or sexual abuse.
      (2) COURSE OF CONDUCT. The term "course of conduct" means a pattern of conduct composed of two or more acts, evidencing a continuity of purpose.
      (3) ENTER OR LEAVE INDIAN COUNTRY. The term "enter or leave Indian country includes leaving the jurisdiction of a tribal government and entering the jurisdiction of another tribal government.
      (4) INDIAN COUNTRY. The term "Indian country" has the meaning stated in section 1151 of this title.
      (5) PROTECTION ORDER. The term "protection order" includes any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil or criminal court (other than a support or child custody order issued pursuant to State divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other Federal law) whether
obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

(6) SERIOUS BODILY INJURY. The term “serious bodily injury” has the meaning stated in section 2119(2).

(7) SPOUSE OR INTIMATE PARTNER. The term “spouse or intimate partner” includes:

(a) for purposes of:

(i) sections other than 2261A, a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser; and,

(ii) section 2261A, a spouse or former spouse of the target of the stalking, a person who shares a child in common with the target of the stalking, and a person who cohabits or has cohabited as a spouse with the target of the stalking; and,

(b) any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.

(8) STATE. The term “State” includes a State of the United States, the District of Columbia, and a commonwealth, territory, or possession of the United States.

(9) TRAVEL IN INTERSTATE OR FOREIGN COMMERCE. The term “travel in interstate or foreign commerce” does not include travel from 1 State to another by an individual who is a member of an Indian tribe and who remains at all times in the territory of the Indian tribe of which the individual is a member.