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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 **AN ACT** ...; **relating to:** enforcement of domestic violence protection orders from
2 other jurisdictions.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

Insert 1-3

3 **SECTION 1.** 806.247 (title) of the statutes is repealed.

4 **SECTION 2.** 806.247 (1) (intro.) of the statutes is renumbered 813.128 (1g)
5 (intro).

6 **SECTION 3.** 806.247 (1) (a) of the statutes is renumbered 813.128 (1g) (a)

7 **SECTION 4.** 806.247 (1) (b) of the statutes is renumbered 813.128 (1g) (e) and
8 amended to read:

9 813.128 (1g) (e) "~~Foreign-protection~~ Protection order" means any temporary or
10 permanent injunction or order of a civil or criminal court of the United States, of an

1 Indian tribe or of any other state issued by a tribunal for preventing to prevent an
 2 individual from engaging in abuse, bodily harm, communication, contact,
 3 harassment, physical proximity, threatening acts or violence by or to ~~a~~ another
 4 person, other than support or custody orders. This term includes an injunction or
 5 order issued under the anti-stalking laws of the issuing state.

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History: 1995 a. 306.

6 **SECTION 5.** 806.247 (2) of the statutes is renumbered 813.128 (2g) and amended

7 to read:

8 813.128 (2g) STATUS OF A FOREIGN PROTECTION ORDER. (a) A foreign protection
 9 order shall be accorded full faith and credit by the courts tribunals in this state and
 10 shall be enforced as if the order were an order of a court tribunal of this state if the
 11 order meets all of the following conditions:

12 1. The foreign protection order was obtained after providing the ~~person against~~
 13 ~~whom the protection order was sought~~ respondent a reasonable notice and
 14 opportunity to be heard sufficient to protect his or her right to due process. If the
 15 foreign protection order is an ex parte injunction or order, the ~~person against whom~~
 16 ~~the order was obtained~~ respondent shall have been given notice and an opportunity
 17 to be heard within a reasonable time after the order was issued sufficient to protect
 18 his or her right to due process.

19 2. The ~~court~~ tribunal that issued the order had jurisdiction over the parties and
 20 over the subject matter.

21 (b) (c) A foreign protection order issued against the person who filed a written
 22 pleading with a ~~court~~ tribunal for a protection order is not entitled to full faith and
 23 credit under this subsection if any of the following occurred:

1 1. No written pleading was filed seeking the foreign protection order against
2 that the person who filed a written pleading with a tribunal for a protection order.

3 2. A cross or counter petition was filed but the ~~court~~ tribunal did not make a
4 specific finding that each party was entitled to a foreign protection order.

5 History: 1995 a. 306.

6 **SECTION 6.** 806.247[✓] (3) of the statutes is renumbered 813.128 (3g) and amended
7 to read:

8 813.128 (3g) FILING AND ENFORCEMENT OF A FOREIGN PROTECTION ORDER. (a) 1.
9 A copy of any foreign protection order, or of a modification of a foreign protection
10 order that is on file with the circuit court, that is authenticated in accordance with
11 an act of congress, an Indian tribal legislative body or the statutes of another state
12 may be filed in the office of the clerk of circuit court of any county of this state. The
13 clerk may not charge a fee for the filing of a foreign protection order. The clerk shall
14 treat any foreign protection order or modification so filed in the same manner as a
15 judgment of the circuit court.

16 (b) 2. Within one business day after a foreign protection order or a modification
17 of a foreign protection order is filed under this subsection, the clerk of circuit court
18 shall send a copy of the foreign protection order or modification of the order to the
19 sheriff in that circuit or to the local law enforcement agency that is the central
20 repository for orders and injunctions in that circuit.

21 (c) 3. The sheriff or law enforcement agency that receives a copy of a foreign
22 protection order or of a modification of an order from the clerk under par. (b) shall
23 enter the information received concerning the order or modification of an order into
24 the transaction information for management of enforcement system no later than 24
hours after receiving the information. The sheriff or law enforcement agency shall

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1 make available to other law enforcement agencies, through a verification system,
2 information on the existence and status of any order or modification of an order filed
3 under this subsection. The information need not be maintained after the order or
4 modification is no longer in effect.

History: 1995 a. 306.

5 **SECTION 7.** 813.128 (1) (title) of the statutes is repealed.

6 **SECTION 8.** 813.128 (1) (a) of the statutes is renumbered 813.128 (2g) (b).

7 **SECTION 9.** 813.128 (1) (b) of the statutes is renumbered 813.128 (3g) (b).

8 **SECTION 10.** 813.128 (1g) (~~b~~^c) of the statutes is created to read:

9 813.128 (1g) (b) "Foreign protection order" means a protection order issued by
10 a tribunal of another state. (move)

11 **SECTION 11.** 813.128 (1g) (~~c~~^b) of the statutes is created to read:

12 813.128 (1g) (c) "Mutual foreign protection order" means a foreign protection
13 order that includes provisions of both the protected individual seeking enforcement
14 of the order and the respondent.

15 **SECTION 12.** 813.128 (1g) (d) of the statutes is created to read:

16 813.128 (1g) (d) "Protected individual" means an individual protected by a
17 protection order.

18 **SECTION 13.** 813.128 (1g) (f) of the statutes is created to read:

19 813.128 (1g) (f) "Respondent" means the individual against whom enforcement
20 of a protection order is sought.

21 **SECTION 14.** 813.128 (1g) (g) of the statutes is created to read:

22 813.128 (1g) (g) "Tribunal" means a court, agency, or other entity of a state of
23 the United States, the District of Columbia, Puerto Rico, the United States Virgin
24 Islands, an American Indian tribe or band, or any territory or insular possession

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1 subject to the jurisdiction of the United States, authorized by law to issue or modify
2 a protection order.

3 **SECTION 15.** 813.128 (2) of the statutes is renumbered 813.128 (4) and amended
4 to read:

5 813.128 (4) PENALTY. A person who knowingly violates a condition of a foreign
6 protection order or modification of a foreign protection order that is entitled to full
7 faith and credit under ~~s. 806.247~~ this section shall be fined not more than \$1,000 or
8 imprisoned for not more than 9 months or both. If a foreign protection order and any
9 modification of that order that is entitled to full faith and credit under ~~s. 806.247~~ this
10 section remains current and in effect at the time that a court convicts a person for
11 a violation of that order or modification of that order, but that order or modification
12 has not been filed under ~~s. 806.247~~ this section, the court shall direct the clerk of
13 circuit court to file the order and any modification of the order.

History: 1995 a. 306.

14 **SECTION 16.** 813.128 (2g) (a) 3. of the statutes is created to read:

15 813.128 (2g) (a) 3. The order identifies the protected individual and the
16 respondent.

17 **SECTION 17.** 813.128 (2g) (a) 4. of the statutes is created to read:

18 813.128 (2g) (a) 4. The order is currently in effect.

19 **SECTION 18.** 813.128 (3) of the statutes is renumbered 813.128 (5) and amended
20 to read:

21 813.128 (5) IMMUNITY. A law enforcement officer, law enforcement agency,
22 prosecuting attorney, state, local, or Indian tribe or band governmental official, or
23 clerk of circuit court is immune from civil and criminal liability for his or her acts or
24 omissions arising out of a decision related to the filing of a foreign protection order

1 or modification or to the detention or arrest of an alleged violator of a foreign
2 protection order or modification if the act or omission is done in a good faith effort
3 to comply with this section and s. 806.247. *2011 stats*

History: 1995 a. 306.

4 **SECTION 19.** 813.128 (3g) (b) 3. of the statutes is created to read:

5 813.128 (3g) (b) 3. For the purposes of this paragraph, the protection order may
6 be inscribed on a tangible medium or may have been stored in an electronic or other
7 medium if it is retrievable in perceivable form. Presentation of a certified copy of a
8 protection order is not required for enforcement.

9 **SECTION 20.** 813.128 (3g) (c) to (i) of the statutes *are* created to read:

10 813.128 (3g) (c) If a foreign protection order is not presented, a law enforcement
11 officer of this state may consider other information in determining whether there is
12 probable cause to believe that a valid foreign protection order exists.

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

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

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

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

3 (h) A tribunal of this state may enforce provisions of a (mutual) foreign protection
4 order that favor a respondent only if the respondent filed a written pleading seeking
5 a protection order from the tribunal of the issuing state and the tribunal of the
6 issuing state made specific findings in favor of the respondent.

7 (i) A tribunal of this state may not a enforce a foreign protection order issued
8 by a tribunal of a state that does not recognize the standing of a protected individual
9 to seek enforcement of the order.

10 **SECTION 21.** 813.128 (6) of the statutes is created to read:

11 813.128 (6) OTHER REMEDIES. A protected individual who pursues remedies
12 under this section is not precluded from pursuing other legal or equitable remedies
13 against the respondent.

14 **SECTION 22.** 813.128 (7) of the statutes is created to read:

15 813.128 (7) APPLICABILITY. This section applies to all of the following:

16 (a) A request made on or after the effective date of this paragraph [revisor
17 inserts date], for enforcement of a foreign protection order for a violation of the order,
18 regardless of when the order was issued or when the violation occurred.

19 (b) A continuing action for enforcement of a foreign protection order, regardless
20 of when the order was issued or when the action was commenced.

21 (END)

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1 **INSERT 1–3**

2 **SECTION 1.** 175.35 (1) (at) of the statutes is amended to read:

3 175.35 (1) (at) “Firearms restrictions record search” means a search of
4 department of justice records to determine whether a person seeking to purchase a
5 handgun is prohibited from possessing a firearm under s. 941.29. “Firearms
6 restrictions record search” includes a criminal history record search, a search to
7 determine whether a person is prohibited from possessing a firearm under s. 51.20
8 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check
9 system to determine whether a person has been ordered not to possess a firearm
10 under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search
11 to determine whether the person is subject to an injunction under s. 813.12 or
12 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court
13 established by any federally recognized Wisconsin Indian tribe or band, except the
14 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he
15 or she is subject to the requirements and penalties under s. 941.29 and that has been
16 filed with the circuit court under s. ~~806.247–(3)~~ 813.128 (3g), and a search to
17 determine whether the person is prohibited from possessing a firearm under s.
18 813.125 (4m).

19 **SECTION 2.** 175.60 (9g) (a) 2. of the statutes is amended to read:

20 175.60 (9g) (a) 2. The department shall conduct a criminal history record
21 search and shall search its records and conduct a search in the national instant
22 criminal background check system to determine whether the applicant is prohibited
23 from possessing a firearm under federal law; whether the applicant is prohibited

1 from possessing a firearm under s. 941.29; whether the applicant is prohibited from
2 possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats.; whether the applicant
3 has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1.,
4 54.10 (3) (f) 1., or 55.12 (10) (a); whether the applicant is subject to an injunction
5 under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued
6 by a court established by any federally recognized Wisconsin Indian tribe or band,
7 except the Menominee Indian tribe of Wisconsin, that includes notice to the
8 respondent that he or she is subject to the requirements and penalties under s.
9 941.29 and that has been filed with the circuit court under s. ~~806.247 (3)~~ 813.128 (3g),
10 and whether the applicant is prohibited from possessing a firearm under s. 813.125
11 (4m); and to determine if the court has prohibited the applicant from possessing a
12 dangerous weapon under s. 969.02 (3) (c) or 969.03 (1) (c) and if the applicant is
13 prohibited from possessing a dangerous weapon as a condition of release under s.
14 969.01.

15 **SECTION 3.** 806.245 (6) of the statutes is amended to read:

16 806.245 (6) A foreign protection order, as defined in s. ~~806.247 (1) (b)~~ 813.128
17 (1g) (e), issued by an Indian tribal court in this state shall be accorded full faith and
18 credit under s. ~~806.247~~ 813.128.

19 **END INSERT 1-3**

20 **INSERT 2-5**

21 **SECTION 4.** 806.247 (2) (title) of the statutes is renumbered 813.128 (2g) (title).

22 **SECTION 5.** 806.247 (2) (a) of the statutes is renumbered 813.128 (2g) (a) and
23 amended to read:

24 813.128 (2g) (a) A foreign protection order shall be accorded full faith and
25 credit by the courts tribunals in this state and shall be enforced as if the order were

plain

1 an order of a ~~court~~ tribunal of this state if the order meets all of the following
2 conditions:

3 1. The foreign protection order was obtained after providing the ~~person against~~
4 ~~whom the protection order was sought~~ respondent a reasonable notice and
5 opportunity to be heard sufficient to protect his or her right to due process. If the
6 foreign protection order is an ex parte injunction or order, the ~~person against whom~~
7 ~~the order was obtained~~ respondent shall have been given notice and an opportunity
8 to be heard within a reasonable time after the order was issued sufficient to protect
9 his or her right to due process.

10 2. The ~~court~~ tribunal that issued the order had jurisdiction over the parties and
11 over the subject matter.

12 **SECTION 6.** 806.247 (2) (b) of the statutes is renumbered 813.128 (2g) (c) and
13 amended to read:

14 813.128 **(2g)** (c) A foreign protection order issued against the person who filed
15 a written pleading with a ~~court~~ tribunal for a protection order is not entitled to full
16 faith and credit under this subsection if any of the following occurred:

17 1. No written pleading was filed seeking the foreign protection order against
18 that the person who filed a written pleading with a tribunal for a protection order.

19 2. A cross or counter petition was filed but the ~~court~~ tribunal did not make a
20 specific finding that each party was entitled to a foreign protection order.

21 **SECTION 7.** 806.247 (3) (title) of the statutes is renumbered 813.128 (3g) (title)
22 and amended to read:

23 813.128 **(3g)** (title) FILING AND ENFORCEMENT OF A FOREIGN PROTECTION ORDER.

24 **SECTION 8.** 806.247 (3) (a) of the statutes is renumbered 813.128 (3g) (a) 1. and
25 amended to read:

1 813.128 (3g) (a) 1. A copy of any foreign protection order, or of a modification
2 of a foreign protection order that is on file with the circuit court, that is authenticated
3 in accordance with an act of congress, an Indian tribal legislative body or the statutes
4 of another state may be filed in the office of the clerk of circuit court of any county
5 of this state. The clerk may not charge a fee for the filing of a foreign protection order.
6 The clerk shall treat any foreign protection order or modification so filed in the same
7 manner as a judgment of the circuit court.

8 **SECTION 9.** 806.247 (3) (b) of the statutes is renumbered 813.128 (3g) (a) 2.

9 **SECTION 10.** 806.247 (3) (c) of the statutes is renumbered 813.128 (3g) (a) 3. and
10 amended to read:

11 813.128 (3g) (a) 3. The sheriff or law enforcement agency that receives a copy
12 of a foreign protection order or of a modification of an order from the clerk under par-
13 (b) subd. 2. shall enter the information received concerning the order or modification
14 of an order into the transaction information for management of enforcement system
15 no later than 24 hours after receiving the information. The sheriff or law
16 enforcement agency shall make available to other law enforcement agencies,
17 through a verification system, information on the existence and status of any order
18 or modification of an order filed under this subsection. The information need not be
19 maintained after the order or modification is no longer in effect.

20 **SECTION 11.** 813.12 (6) (am) 1. of the statutes is amended to read:

21 813.12 (6) (am) 1. If an injunction is issued or extended under sub. (4) or if a
22 tribal injunction is filed under s. ~~806.247 (3)~~ 813.128 (3g), the clerk of the circuit court
23 shall notify the department of justice of the injunction and shall provide the
24 department of justice with information concerning the period during which the
25 injunction is in effect and information necessary to identify the respondent for

1 purposes of a firearms restrictions record search under s. 175.35 (2g) (c) or a
2 background check under s. 175.60 (9g) (a).

3 **END INSERT 2-5**

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5 **INSERT 4-5**

6 **SECTION 12.** 813.128 (1) (a) of the statutes is renumbered 813.128 (2g) (b) and
7 amended to read:

8 813.128 (2g) (b) A foreign protection order or modification of the foreign
9 protection order that meets the requirements under s. ~~806.247(2)~~ this section has
10 the same effect as an order issued under s. 813.12, 813.122, 813.123 or 813.125,
11 except that the foreign protection order or modification shall be enforced according
12 to its own terms.

13 **END INSERT 4-5**

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15 **INSERT 7-20**

16 **SECTION 13.** 940.20 (1m) (a) of the statutes is amended to read:

17 940.20 (1m) (a) Any person who is subject to an injunction under s. 813.12 or
18 a tribal injunction filed under s. ~~806.247(3)~~ 813.128 (3g) and who intentionally
19 causes bodily harm to the petitioner who sought the injunction by an act done
20 without the consent of the petitioner is guilty of a Class I felony.

21 **SECTION 14.** 941.29 (1) (f) of the statutes is amended to read:

22 941.29 (1) (f) Enjoined under an injunction issued under s. 813.12 or 813.122
23 or under a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court
24 established by any federally recognized Wisconsin Indian tribe or band, except the
25 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he

1 or she is subject to the requirements and penalties under this section and that has
2 been filed under s. ~~806.247(3)~~ 813.128(3g).

3 **SECTION 15.** 968.07 (1m) of the statutes is amended to read:

4 968.07 (1m) Notwithstanding sub. (1), a law enforcement officer shall arrest
5 a person when required to do so under s. 813.12 (7), 813.122 (10), 813.125 (6), 813.128
6 ~~(1)~~ (3g) (b), or 968.075 (2) (a) or (5) (e).

7 **SECTION 16.** 968.075 (2) (am) of the statutes is amended to read:

8 968.075 (2) (am) Notwithstanding s. 968.07 (1), unless the person's arrest is
9 required under s. 813.12 (7), 813.122 (10), 813.125 (6), or 813.128 ~~(1)~~ (3g) (b) or sub.
10 (5) (e), if a law enforcement officer identifies the predominant aggressor, it is
11 generally not appropriate for a law enforcement officer to arrest anyone under par.
12 (a) other than the predominant aggressor.

13 **SECTION 17.** 973.075 (1) (b) 1m. f. of the statutes is amended to read:

14 973.075 (1) (b) 1m. f. In the commission of a crime under s. 813.12 (8), 813.122
15 (11), 813.123 (10), 813.125 (7), 813.128 ~~(2)~~ (4) or 940.32.

16 **SECTION 18.** 973.075 (1) (bm) of the statutes is amended to read:

17 973.075 (1) (bm) Any property used in the commission of a crime under s.
18 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 ~~(2)~~ (4) or 940.32, but if the
19 property is encumbered by a bonafide perfected security interest that was perfected
20 before the date of the commission of the current violation and the holder of the
21 security interest neither had knowledge of nor consented to the commission of that
22 violation, the holder of the security interest shall be paid from the proceeds of the
23 forfeiture.

24 **END INSERT 7-20**

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

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* This draft merges ss. 806.247 and 813.128 and adds language consistent with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act. Hopefully, this merger and additional language will make Wisconsin's laws consistent with that act.

You may want to share this draft with experts in the legal area to make sure I did not make any mistakes or create any problems.

Robert Nelson
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E-mail: robert.nelson@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2141/P1dn
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June 11, 2013

This draft merges ss. 806.247 and 813.128 and adds language consistent with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act. Hopefully, this merger and additional language will make Wisconsin's laws consistent with that act.

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§ 13.128 (1g) (intro)
(1g) (a)
(b)
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(1g) (e) (5)
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~~SECTION 1.~~ 806.247 (1) (intro.) of the statutes is amended to read:

~~806.247 (1)~~ 813.128 (1g) ^B(intro). DEFINITIONS. (intro.) In this section:

History: 1995 a. 306.

~~SECTION 2.~~ 806.247 (1) (intro.) of the statutes is renumbered 813.128 (1g) (intro).

~~SECTION 3.~~ 806.247 (1) (a) of the statutes is amended to read:

~~806.247 (1) (a)~~ 813.128 (1g) (a) "Bodily harm" has the meaning given in s. 939.22 (4).

History: 1995 a. 306.

~~SECTION 4.~~ 806.247 (1) (a) of the statutes is renumbered 813.128 (1g) (a).

~~SECTION 5.~~ 806.247 (1) (b) of the statutes is renumbered 813.128 (1g) (e) and amended to read:

813.128 (1g) (e) "~~Foreign protection~~ Protection order" means any temporary or permanent injunction or order of a civil or criminal court of the United States, of an Indian tribe or of any other state issued for preventing by a tribunal to prevent an individual from engaging in abuse, bodily harm, communication, contact, harassment, physical proximity, threatening acts or violence by or to a another person, other than support or custody orders. This term includes an injunction or order issued under the antistalking laws of the issuing state.

1 ~~SECTION 6.~~ 806.247 (2) (title) of the statutes is amended to read:

2 806.247 (2) (title) 813.128 (2g) (title) STATUS OF A FOREIGN PROTECTION ORDER.

3 History: 1995 a. 306

~~SECTION 7.~~ 806.247 (2) (title) of the statutes is renumbered 813.128 (2g) (title).

4
5 ~~SECTION 8.~~ 806.247 (2) (a) of the statutes is renumbered 813.128 (2g) (a) and

6 amended to read:

7 813.128 (2g) (a) A foreign protection order shall be accorded full faith and
8 credit by the courts tribunals in this state and shall be enforced as if the order were
9 an order of a court tribunal of this state if the order meets all of the following
10 conditions:

11 1. The foreign protection order was obtained after providing the person against
12 whom the protection order was sought respondent a reasonable notice and
13 opportunity to be heard sufficient to protect his or her right to due process. If the
14 foreign protection order is an ex parte injunction or order, the person against whom
15 the order was obtained respondent shall have been given notice and an opportunity
16 to be heard within a reasonable time after the order was issued sufficient to protect
17 his or her right to due process.

18 2. The court tribunal that issued the order had jurisdiction over the parties and
19 over the subject matter.

20 ~~SECTION 9.~~ 806.247 (2) (b) of the statutes is renumbered 813.128 (2g) (c) and
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22 813.128 (2g) (c) A foreign protection order issued against the person who filed
23 a written pleading with a court tribunal for a protection order is not entitled to full
24 faith and credit under this subsection if any of the following occurred:

1 1. No written pleading was filed seeking the foreign protection order against
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8 ~~SECTION 11.~~ 806.247 (3) (a) of the statutes is renumbered 813.128 (3g) (a) 1. and
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11 of a foreign protection order that is on file with the circuit court, that is authenticated
12 in accordance with an act of congress, an Indian tribal legislative body or the statutes
13 of another state may be filed in the office of the clerk of circuit court of any county
14 of this state. The clerk may not charge a fee for the filing of a foreign protection order.
15 The clerk shall treat any foreign protection order or modification so filed in the same
16 manner as a judgment of the circuit court.

17
18 ~~SECTION 12.~~ 806.247 (3) (b) of the statutes is amended to read:

19 ~~806.247 (3) (b)~~ 813.128 (3g) (a) 2 Within one business day after a foreign
20 protection order or a modification of a foreign protection order is filed under this
21 subsection, the clerk of circuit court shall send a copy of the foreign protection order
22 or modification of the order to the sheriff in that circuit or to the local law
23 enforcement agency that is the central repository for orders and injunctions in that
24 circuit.

1 ~~SECTION 13.~~ 806.247 (3) (b) of the statutes is renumbered 813.128 (3g) (a) 2.

2
3 ~~SECTION 14.~~ 806.247 (3) (c) of the statutes is renumbered 813.128 (3g) (a) 3. and
4 amended to read:

5 813.128 (3g) (a) 3. The sheriff or law enforcement agency that receives a copy
6 of a foreign protection order or of a modification of an order from the clerk under ~~par-~~
7 ~~(b) subd. 2.~~ shall enter the information received concerning the order or modification
8 of an order into the transaction information for management of enforcement system
9 no later than 24 hours after receiving the information. The sheriff or law
10 enforcement agency shall make available to other law enforcement agencies,
11 through a verification system, information on the existence and status of any order
12 or modification of an order filed under this subsection. The information need not be
13 maintained after the order or modification is no longer in effect.

14 ~~SECTION 15.~~ 813.128 (title) of the statutes is amended to read:

15 813.128 ~~(title)~~ **Foreign Uniform interstate enforcement of domestic**
16 **violence protection orders act.**

17
18 ~~SECTION 16.~~ 813.128 (1) (b) of the statutes is amended to read:

19 ~~813.128 (1) (b)~~ 813.128 (3g) (b) A law enforcement officer shall arrest and take
20 the subject of a foreign protection order into custody if all of the following occur:

21 1. A person protected under a foreign protection order presents the law
22 enforcement officer with a copy of a foreign protection order issued against the
23 subject, or the law enforcement officer determines that a valid foreign protection
24 order exists against the subject through communication with appropriate
25 authorities. If a law enforcement officer examines a copy of a foreign protection

1 order, the order, with any modification, is presumed to be valid if the order or
2 modification appears to be valid on its face and circumstances suggest that the order
3 and any modification are in effect.

4 2. The law enforcement officer has probable cause to believe that the person has
5 violated the terms of the foreign protection order or modification of the order.

6 ~~History: 1995 a. 306.~~

~~SECTION 17. 813.128 (1) (b) of the statutes is renumbered 813.128 (3g) (b).~~

7
8 ~~SECTION 18. 813.128 (1g) (b) of the statutes is created to read:~~

9 813.128 (1g) (b) "Foreign mutual protection order" means a foreign protection
10 order that includes provisions in favor of both the individual seeking enforcement of
11 the order and the respondent.

12 ~~SECTION 19. 813.128 (1g) (c) of the statutes is created to read:~~

13 813.128 (1g) (c) "Foreign protection order" means a protection order issued by
14 a tribunal of another state.

15 ~~SECTION 20. 813.128 (1g) (d) of the statutes is created to read:~~

16 813.128 (1g) (d) "Protected individual" means an individual protected by a
17 protection order.

18 ~~SECTION 21. 813.128 (1g) (f) of the statutes is created to read:~~

19 813.128 (1g) (f) "Respondent" means the individual against whom enforcement
20 of a protection order is sought.

21 ~~SECTION 22. 813.128 (1g) (g) of the statutes is created to read:~~

22 813.128 (1g) (g) "Tribunal" means a court, agency, or other entity of a state of
23 the United States, the District of Columbia, Puerto Rico, the United States Virgin
24 Islands, an American Indian tribe or band, or any territory or insular possession

1 subject to the jurisdiction of the United States, authorized by law to issue or modify
2 a protection order.

3 **SECTION 23.** 813.128 (2) of the statutes is renumbered 813.128 (4) and amended
4 to read:

5 813.128 (4) PENALTY. A person who knowingly violates a condition of a foreign
6 protection order or modification of a foreign protection order that is entitled to full
7 faith and credit under s. ~~806.247~~ this section shall be fined not more than \$1,000 or
8 imprisoned for not more than 9 months or both. If a foreign protection order and any
9 modification of that order that is entitled to full faith and credit under s. ~~806.247~~ this
10 section remains current and in effect at the time that a court convicts a person for
11 a violation of that order or modification of that order, but that order or modification
12 has not been filed under s. ~~806.247~~ this section, the court shall direct the clerk of
13 circuit court to file the order and any modification of the order.

14 **SECTION 24.** 813.128 (2g) (a) 3. of the statutes is created to read:

15 813.128 (2g) (a) 3. The order identifies the protected individual and the
16 respondent.

17 **SECTION 25.** 813.128 (2g) (a) 4. of the statutes is created to read:

18 813.128 (2g) (a) 4. The order is currently in effect.

19 **SECTION 26.** 813.128 (3) of the statutes is renumbered 813.128 (5) and amended
20 to read:

21 813.128 (5) IMMUNITY. A law enforcement officer, law enforcement agency,
22 prosecuting attorney, state, local, or Indian tribe or band governmental official, or
23 clerk of circuit court is immune from civil and criminal liability for his or her acts or
24 omissions arising out of a decision related to the filing of a foreign protection order
25 or modification or to the detention or arrest of an alleged violator of a foreign

1 protection order or modification if the act or omission is done in a good faith effort
2 to comply with this section and s. 806.247, 2011 stats.

3 ~~SECTION 27.~~ 813.128 (3g) (b) 3. of the statutes is created to read:

4 813.128 (3g) (b) 3. For the purposes of this paragraph, the protection order may
5 be inscribed on a tangible medium or may have been stored in an electronic or other
6 medium if it is retrievable in perceivable form. Presentation of a certified copy of a
7 protection order is not required for enforcement.

8 ~~SECTION 28.~~ 813.128 (3g) (c) to (i) of the statutes are created to read:

9 813.128 (3g) (c) If a foreign protection order is not presented, a law enforcement
10 officer of this state may consider other information in determining whether there is
11 probable cause to believe that a valid foreign protection order exists.

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

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

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

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

1 (h) A tribunal of this state may enforce provisions of a foreign mutual protection
2 order that favor a respondent only if the respondent filed a written pleading seeking
3 a protection order from the tribunal of the issuing state and the tribunal of the
4 issuing state made specific findings in favor of the respondent.

5 (i) A tribunal of this state may not a enforce a foreign protection order issued
6 by a tribunal of a state that does not recognize the standing of a protected individual
7 to seek enforcement of the order.

8 ~~SECTION 29. 813.128 (6) of the statutes is created to read:~~

9 813.128 (6) OTHER REMEDIES. A protected individual who pursues remedies
10 under this section is not precluded from pursuing other legal or equitable remedies
11 against the respondent.

12 ~~SECTION 30. 813.128 (7) of the statutes is created to read:~~

13 813.128 (7) APPLICABILITY. This section applies to all of the following:

14 (a) A request made on or after the effective date of this paragraph [LRB
15 inserts date], for enforcement of a foreign protection order for a violation of the order,
16 regardless of when the order was issued or when the violation occurred.

17 (b) A continuing action for enforcement of a foreign protection order, regardless
18 of when the order was issued or when the action was commenced.



In 6/25
State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2141/P1

RPN:sac:pb

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

repeal

1 AN ACT *to repeal* 806.247 (title) and 813.128 (1) (title); *to renumber* 806.247 (1)
2 (intro.), 806.247 (1) (a), 806.247 (2) (title), 806.247 (3) (b) and 813.128 (1) (b); *to*
3 *renumber and amend* 806.247 (1) (b), 806.247 (2) (a), 806.247 (2) (b), 806.247
4 (3) (title), 806.247 (3) (a), 806.247 (3) (c), 813.128 (2) and 813.128 (3); *to amend*
5 175.35 (1) (at), 175.60 (9g) (a) 2., 806.245 (6), 813.12 (6) (am) 1., 940.20 (1m) (a),
6 941.29 (1) (f), 968.07 (1m), 968.075 (2) (am), 973.075 (1) (b) 1m. f. and 973.075
7 (1) (bm); and *to create* 813.128 (1g) (b), 813.128 (1g) (c), 813.128 (1g) (d),
8 813.128 (1g) (f), 813.128 (1g) (g), 813.128 (2g) (a) 3., 813.128 (2g) (a) 4., 813.128
9 (3g) (b) 3., 813.128 (3g) (c) to (i), 813.128 (6) and 813.128 (7) of the statutes;

1 **relating to:** enforcement of domestic violence protection orders from other
2 jurisdictions.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 **SECTION 1.** 175.35 (1) (at) of the statutes is amended to read:

4 175.35 (1) (at) "Firearms restrictions record search" means a search of
5 department of justice records to determine whether a person seeking to purchase a
6 handgun is prohibited from possessing a firearm under s. 941.29. "Firearms
7 restrictions record search" includes a criminal history record search, a search to
8 determine whether a person is prohibited from possessing a firearm under s. 51.20
9 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check
10 system to determine whether a person has been ordered not to possess a firearm
11 under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search
12 to determine whether the person is subject to an injunction under s. 813.12 or
13 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court
14 established by any federally recognized Wisconsin Indian tribe or band, except the
15 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he
16 or she is subject to the requirements and penalties under s. 941.29 and that has been
17 filed with the circuit court under s. ~~806.247 (3)~~ 813.128 (3g), and a search to
18 determine whether the person is prohibited from possessing a firearm under s.
19 813.125 (4m).

20 **SECTION 2.** 175.60 (9g) (a) 2. of the statutes is amended to read:

1 175.60 (9g) (a) 2. The department shall conduct a criminal history record
2 search and shall search its records and conduct a search in the national instant
3 criminal background check system to determine whether the applicant is prohibited
4 from possessing a firearm under federal law; whether the applicant is prohibited
5 from possessing a firearm under s. 941.29; whether the applicant is prohibited from
6 possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats.; whether the applicant
7 has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1.,
8 54.10 (3) (f) 1., or 55.12 (10) (a); whether the applicant is subject to an injunction
9 under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued
10 by a court established by any federally recognized Wisconsin Indian tribe or band,
11 except the Menominee Indian tribe of Wisconsin, that includes notice to the
12 respondent that he or she is subject to the requirements and penalties under s.
13 941.29 and that has been filed with the circuit court under s. ~~806.247 (3)~~ 813.128 (3g);
14 and whether the applicant is prohibited from possessing a firearm under s. 813.125
15 (4m); and to determine if the court has prohibited the applicant from possessing a
16 dangerous weapon under s. 969.02 (3) (c) or 969.03 (1) (c) and if the applicant is
17 prohibited from possessing a dangerous weapon as a condition of release under s.
18 969.01.

19 **SECTION 3.** 806.245 (6) of the statutes is amended to read:

20 806.245 (6) A foreign protection order, as defined in s. ~~806.247 (1) (b)~~ 813.128
21 (1g) (e), issued by an Indian tribal court in this state shall be accorded full faith and
22 credit under s. ~~806.247~~ 813.128.

23 **SECTION 4.** 806.247 (title) of the statutes is repealed.

24 **SECTION 5.** 806.247 (1) (intro.) of the statutes is renumbered 813.128 (1g)
25 (intro).

1 **SECTION 6.** 806.247 (1) (a) of the statutes is renumbered 813.128 (1g) (a).

2 **SECTION 7.** 806.247 (1) (b) of the statutes is renumbered 813.128 (1g) (e) and
3 amended to read:

4 813.128 (1g) (e) “~~Foreign protection~~ Protection order” means any temporary or
5 permanent injunction or order of a civil or criminal court of the United States, of an
6 Indian tribe or of any other state issued for preventing by a tribunal to prevent an
7 individual from engaging in abuse, bodily harm, communication, contact,
8 harassment, physical proximity, threatening acts or violence by or to a another
9 person, other than support or custody orders. This term includes an injunction or
10 order issued under the antistalking laws of the issuing state.

11 **SECTION 8.** 806.247 (2) (title) of the statutes is renumbered 813.128 (2g) (title).

12 **SECTION 9.** 806.247 (2) (a) of the statutes is renumbered 813.128 (2g) (a) and
13 amended to read:

14 813.128 (2g) (a) A foreign protection order shall be accorded full faith and
15 credit by the courts tribunals in this state and shall be enforced as if the order were
16 an order of a court tribunal of this state if the order meets all of the following
17 conditions:

18 1. The foreign protection order was obtained after providing the person against
19 ~~whom the protection order was sought~~ respondent a reasonable notice and
20 opportunity to be heard sufficient to protect his or her right to due process. If the
21 foreign protection order is an ex parte injunction or order, the person against whom
22 ~~the order was obtained~~ respondent shall have been given notice and an opportunity
23 to be heard within a reasonable time after the order was issued sufficient to protect
24 his or her right to due process.

1 2. The ~~court~~ tribunal that issued the order had jurisdiction over the parties and
2 over the subject matter.

3 **SECTION 10.** 806.247 (2) (b) of the statutes is renumbered 813.128 (2g) (c) and
4 amended to read:

5 813.128 (2g) (c) A foreign protection order issued against the person who filed
6 a written pleading with a ~~court~~ tribunal for a protection order is not entitled to full
7 faith and credit under this subsection if any of the following occurred:

8 1. No written pleading was filed seeking the foreign protection order against
9 that the person who filed a written pleading with a tribunal for a protection order.

10 2. A cross or counter petition was filed but the ~~court~~ tribunal did not make a
11 specific finding that each party was entitled to a foreign protection order.

12 **SECTION 11.** 806.247 (3) (title) of the statutes is renumbered 813.128 (3g) (title)
13 and amended to read:

14 813.128 (3g) (title) FILING AND ENFORCEMENT OF A FOREIGN PROTECTION ORDER.

15 **SECTION 12.** 806.247 (3) (a) of the statutes is renumbered 813.128 (3g) (a) 1. and
16 amended to read:

17 813.128 (3g) (a) 1. A copy of any foreign protection order, or of a modification
18 of a foreign protection order that is on file with the circuit court, that is authenticated
19 in accordance with an act of congress, an Indian tribal legislative body or the statutes
20 of another state may be filed in the office of the clerk of circuit court of any county
21 of this state. The clerk may not charge a fee for the filing of a foreign protection order.

22 The clerk shall treat any foreign protection order or modification so filed in the same
23 manner as a judgment of the circuit court.

24 **SECTION 13.** 806.247 (3) (b) of the statutes is renumbered 813.128 (3g) (a) 2.

1 **SECTION 14.** 806.247 (3) (c) of the statutes is renumbered 813.128 (3g) (a) 3. and
2 amended to read:

3 813.128 (**3g**) (a) 3. The sheriff or law enforcement agency that receives a copy
4 of a foreign protection order or of a modification of an order from the clerk under ~~par.~~
5 (b) subd. 2. shall enter the information received concerning the order or modification
6 of an order into the transaction information for management of enforcement system
7 no later than 24 hours after receiving the information. The sheriff or law
8 enforcement agency shall make available to other law enforcement agencies,
9 through a verification system, information on the existence and status of any order
10 or modification of an order filed under this subsection. The information need not be
11 maintained after the order or modification is no longer in effect.

12 **SECTION 15.** 813.12 (6) (am) 1. of the statutes is amended to read:

13 813.12 (**6**) (am) 1. If an injunction is issued or extended under sub. (4) or if a
14 tribal injunction is filed under s. ~~806.247 (3)~~ 813.128 (3g), the clerk of the circuit court
15 shall notify the department of justice of the injunction and shall provide the
16 department of justice with information concerning the period during which the
17 injunction is in effect and information necessary to identify the respondent for
18 purposes of a firearms restrictions record search under s. 175.35 (2g) (c) or a
19 background check under s. 175.60 (9g) (a).

*In 9-20
6-20*



20 **SECTION 16.** 813.128 (1) (title) of the statutes is repealed.

21 **SECTION 17.** 813.128 (1) (b) of the statutes is renumbered 813.128 (3g) (b).

22 **SECTION 18.** 813.128 (1g) (b) of the statutes is created to read:

23 813.128 (**1g**) (b) "Foreign mutual protection order" means a foreign protection
24 order that includes provisions in favor of both the individual seeking enforcement of
25 the order and the respondent.

1 SECTION 19. 813.128 (1g) (c) of the statutes is created to read:

2 813.128 (1g) (c) "Foreign protection order" means a protection order issued by

3 a tribunal of another state *other than a tribunal in this state*

4 SECTION 20. 813.128 (1g) (d) of the statutes is created to read:

5 813.128 (1g) (d) "Protected individual" means an individual protected by a
6 protection order.

7 SECTION 21. 813.128 (1g) (f) of the statutes is created to read:

8 813.128 (1g) (f) "Respondent" means the individual against whom enforcement
9 of a protection order is sought.

10 SECTION 22. 813.128 (1g) (g) of the statutes is created to read:

11 813.128 (1g) (g) "Tribunal" means a court, agency, or other entity of a state of
12 the United States, the District of Columbia, Puerto Rico, the United States Virgin
13 Islands, an American Indian tribe or band, or any territory or insular possession
14 subject to the jurisdiction of the United States, authorized by law to issue or modify
15 a protection order.

16 SECTION 23. 813.128 (2) of the statutes is renumbered 813.128 (4) and amended
17 to read:

18 813.128 (4) PENALTY. A person who knowingly violates a condition of a foreign
19 protection order or modification of a foreign protection order that is entitled to full
20 faith and credit under s. 806.247 this section shall be fined not more than \$1,000 or
21 imprisoned for not more than 9 months or both. If a foreign protection order and any
22 modification of that order that is entitled to full faith and credit under s. 806.247 this
23 section remains current and in effect at the time that a court convicts a person for
24 a violation of that order or modification of that order, but that order or modification

1 has not been filed under ~~s. 806.247~~ this section, the court shall direct the clerk of
2 circuit court to file the order and any modification of the order.

3 **SECTION 24.** 813.128 (2g) (a) 3. of the statutes is created to read:

4 813.128 (2g) (a) 3. The order identifies the protected individual and the
5 respondent.

6 **SECTION 25.** 813.128 (2g) (a) 4. of the statutes is created to read:

7 813.128 (2g) (a) 4. The order is currently in effect.

8 **SECTION 26.** 813.128 (3) of the statutes is renumbered 813.128 (5) and amended
9 to read:

10 813.128 (5) IMMUNITY. A law enforcement officer, law enforcement agency,
11 prosecuting attorney, state, local, or Indian tribe or band governmental official, or
12 clerk of circuit court is immune from civil and criminal liability for his or her acts or
13 omissions arising out of a decision related to the filing of a foreign protection order
14 or modification or to the detention or arrest of an alleged violator of a foreign
15 protection order or modification if the act or omission is done in a good faith effort
16 to comply with this section and s. 806.247, 2011 stats.

17 **SECTION 27.** 813.128 (3g) (b) 3. of the statutes is created to read:

18 813.128 (3g) (b) 3. For the purposes of this paragraph, the protection order may
19 be inscribed on a tangible medium or may have been stored in an electronic or other
20 medium if it is retrievable in perceivable form. Presentation of a certified copy of a
21 protection order is not required for enforcement.

22 **SECTION 28.** 813.128 (3g) (c) to (i) of the statutes are created to read:

23 813.128 (3g) (c) If a foreign protection order is not presented, a law enforcement
24 officer of this state may consider other information in determining whether there is
25 probable cause to believe that a valid foreign protection order exists.

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

7 (e) A tribunal of this state shall enforce the provisions of a valid foreign
8 protection order that govern custody, physical placement, and visitation, if the order
9 was issued in accordance with the jurisdictional requirements governing the
10 issuance of custody, physical placement, and visitation orders in the issuing state.

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

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

15 (h) A tribunal of this state may enforce provisions of a foreign mutual protection
16 order that favor a respondent only if the respondent filed a written pleading seeking
17 a protection order from the tribunal of the issuing state and the tribunal of the
18 issuing state made specific findings in favor of the respondent.

19 (i) A tribunal of this state may not enforce a foreign protection order issued
20 by a tribunal of a state that does not recognize the standing of a protected individual
21 to seek enforcement of the order.

22 **SECTION 29.** 813.128 (6) of the statutes is created to read:

23 813.128 (6) OTHER REMEDIES. A protected individual who pursues remedies
24 under this section is not precluded from pursuing other legal or equitable remedies
25 against the respondent.

1 **SECTION 30.** 813.128 (7) of the statutes is created to read:

2 813.128 (7) **APPLICABILITY.** This section applies to all of the following:

3 (a) A request made on or after the effective date of this paragraph [LRB
4 inserts date], for enforcement of a foreign protection order for a violation of the order,
5 regardless of when the order was issued or when the violation occurred.

6 (b) A continuing action for enforcement of a foreign protection order, regardless
7 of when the order was issued or when the action was commenced.

8 **SECTION 31.** 940.20 (1m) (a) of the statutes is amended to read:

9 940.20 (1m) (a) Any person who is subject to an injunction under s. 813.12 or
10 a tribal injunction filed under s. ~~806.247 (3)~~ 813.128 (3g) and who intentionally
11 causes bodily harm to the petitioner who sought the injunction by an act done
12 without the consent of the petitioner is guilty of a Class I felony.

13 **SECTION 32.** 941.29 (1) (f) of the statutes is amended to read:

14 941.29 (1) (f) Enjoined under an injunction issued under s. 813.12 or 813.122
15 or under a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court
16 established by any federally recognized Wisconsin Indian tribe or band, except the
17 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he
18 or she is subject to the requirements and penalties under this section and that has
19 been filed under s. ~~806.247 (3)~~ 813.128 (3g).

20 **SECTION 33.** 968.07 (1m) of the statutes is amended to read:

21 968.07 (1m) Notwithstanding sub. (1), a law enforcement officer shall arrest
22 a person when required to do so under s. 813.12 (7), 813.122 (10), 813.125 (6), 813.128
23 (1) (3g) (b), or 968.075 (2) (a) or (5) (e).

24 **SECTION 34.** 968.075 (2) (am) of the statutes is amended to read:

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e
Current law gives domestic violence protection orders issued by another state or Indian tribe full faith and credit in this state, allowing those orders to be enforced in courts in this state if they meet certain procedural requirements, including ensuring that the court had jurisdiction over the persons involved and the subject matter, and that the person subject to the order was provided with his or her right to due process. Current law establishes a method of filing a foreign protection order with a circuit court and requires the circuit court to send a copy of that order to the county sheriff or local law enforcement agency.

Additional current law gives law enforcement officers the authority to arrest a person subject to a protection order if the law enforcement officer has probable cause to believe the person has violated a valid foreign protection order. Under current law, court officials, prosecutors, and law enforcement officers are immune from any liability for his or her acts or omissions related to the filing of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order.

This bill consolidates those separate units of current law and creates additional statutory language to enact the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

*
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cc
*
The Act defines "protection order" to be 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. The fact that the order has terms and conditions that are different from orders issued in the enforcing state, or come from tribunals that are not organized in the same fashion as the tribunals of the enforcing state, does not mean that the enforcing state may refuse enforcement. Any kind of a foreign order that is intended to prevent violence must be enforced. The term "tribunal" as used in the Act, is consistent with the usage of the Uniform Interstate Family Support Act, which has been enacted in every U.S. jurisdiction. Whether the enforcing body is a court or an agency, the term tribunal includes both within its scope.

*
A tribunal with jurisdiction to enforce orders may enforce a foreign protection order without any other prior perfecting or validating procedure. A valid foreign protection order must be enforced. A valid protection order is one that identifies the protected individual (the potential victim) and the respondent (the potential victimizer), is currently in effect, and was issued by a tribunal with full jurisdiction. An order valid on its face establishes a prima facie case for its validity. The presence of an order that identifies the protected individual and the respondent that is current constitutes probable cause to believe that a valid foreign protection order exists. Law enforcement officers who are not presented with an actual order may still act to enforce upon other information that provides probable cause to believe that a valid order exists.

1 **SECTION 1.** 813.128 (1) (a) of the statutes is renumbered 813.128 (2g) (b) and
2 amended to read:

3 813.128 **(2g)** (b) A foreign protection order or modification of the foreign
4 protection order that meets the requirements under s. ~~806.247 (2)~~ this section has
5 the same effect as an order issued under s. 813.12, 813.122, 813.123 or 813.125,
6 except that the foreign protection order or modification shall be enforced according
7 to its own terms.

History: 1995 a. 306.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2141/P2
RPN:sac:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

*the Uniform Interstate
Enforcement of Domestic
Violence Protection Orders
Act*

1 AN ACT *to repeal* 806.247 (title) and 813.128 (1) (title); *to renumber* 806.247 (1)
2 (intro.), 806.247 (1) (a), 806.247 (2) (title), 806.247 (3) (b) and 813.128 (1) (b); *to*
3 *renumber and amend* 806.247 (1) (b), 806.247 (2) (a), 806.247 (2) (b), 806.247
4 (3) (title), 806.247 (3) (a), 806.247 (3) (c), 813.128 (1) (a), 813.128 (2) and 813.128
5 (3); *to amend* 175.35 (1) (at), 175.60 (9g) (a) 2., 806.245 (6), 813.12 (6) (am) 1.,
6 813.128 (title), 940.20 (1m) (a), 941.29 (1) (f), 968.07 (1m), 968.075 (2) (am),
7 973.075 (1) (b) 1m. f. and 973.075 (1) (bm); and *to create* 813.128 (1g) (b),
8 813.128 (1g) (c), 813.128 (1g) (d), 813.128 (1g) (f), 813.128 (1g) (g), 813.128 (2g)
9 (a) 3., 813.128 (2g) (a) 4., 813.128 (3g) (b) 3., 813.128 (3g) (c) to (i), 813.128 (6)
10 and 813.128 (7) of the statutes; *relating to: enforcement of domestic violence*
11 *protection orders from other jurisdictions.*

Analysis by the Legislative Reference Bureau

Current law gives domestic violence protection orders issued by another state or an Indian tribe full faith and credit in this state, allowing those orders to be enforced in courts in this state if they meet certain procedural requirements, including ensuring that the court had jurisdiction over the persons involved and the

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subject matter, and that the person subject to the order was provided with his or her right to due process. Current law establishes a method of filing a foreign protection order with a circuit court and requires the circuit court to send a copy of that order to the county sheriff or local law enforcement agency.

Additional current law gives law enforcement officers the authority to arrest a person subject to a protection order if the law enforcement officer has probable cause to believe the person has violated a valid foreign protection order. Under current law, court officials, prosecutors, and law enforcement officers are immune from any liability for his or her acts or omissions related to the filing of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order.

This bill consolidates those separate units of current law and creates additional statutory language to enact the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act.

*
*

The Act defines "protection order" to be an injunction or other order, issued by a tribunal under the domestic violence, family violence, or antistalking 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. The fact that the order has terms and conditions that are different from orders issued in the enforcing state, or come from tribunals that are not organized in the same fashion as the tribunals of the enforcing state, does not mean that the enforcing state may refuse enforcement. Any kind of a foreign order that is intended to prevent violence must be enforced. The term "tribunal," as used in the Act, is consistent with the usage of the Uniform Interstate Family Support Act, which has been enacted in every U.S. jurisdiction. Whether the enforcing body is a court or an agency, the term tribunal includes both within its scope.

as adopted by the National Conference of Commissioners on Uniform State Laws

A tribunal with jurisdiction to enforce orders may enforce a foreign protection order without any other prior perfecting or validating procedure. A valid foreign protection order must be enforced. A valid protection order is one that identifies the protected individual (the potential victim) and the respondent (the potential victimizer), is currently in effect, and was issued by a tribunal with full jurisdiction. An order valid on its face establishes a prima facie case for its validity. The presence of an order that identifies the protected individual and the respondent that is current constitutes probable cause to believe that a valid foreign protection order exists. Law enforcement officers who are not presented with an actual order may still act to enforce upon other information that provides probable cause to believe that a valid order exists.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 175.35 (1) (at) of the statutes is amended to read:
- 2 175.35 (1) (at) "Firearms restrictions record search" means a search of
- 3 department of justice records to determine whether a person seeking to purchase a

1 handgun is prohibited from possessing a firearm under s. 941.29. “Firearms
2 restrictions record search” includes a criminal history record search, a search to
3 determine whether a person is prohibited from possessing a firearm under s. 51.20
4 (13) (cv) 1., 2007 stats., a search in the national instant criminal background check
5 system to determine whether a person has been ordered not to possess a firearm
6 under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1., 54.10 (3) (f) 1., or 55.12 (10) (a), a search
7 to determine whether the person is subject to an injunction under s. 813.12 or
8 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court
9 established by any federally recognized Wisconsin Indian tribe or band, except the
10 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he
11 or she is subject to the requirements and penalties under s. 941.29 and that has been
12 filed with the circuit court under s. ~~806.247 (3)~~ 813.128 (3g), and a search to
13 determine whether the person is prohibited from possessing a firearm under s.
14 813.125 (4m).

15 **SECTION 2.** 175.60 (9g) (a) 2. of the statutes is amended to read:

16 175.60 (9g) (a) 2. The department shall conduct a criminal history record
17 search and shall search its records and conduct a search in the national instant
18 criminal background check system to determine whether the applicant is prohibited
19 from possessing a firearm under federal law; whether the applicant is prohibited
20 from possessing a firearm under s. 941.29; whether the applicant is prohibited from
21 possessing a firearm under s. 51.20 (13) (cv) 1., 2007 stats.; whether the applicant
22 has been ordered not to possess a firearm under s. 51.20 (13) (cv) 1., 51.45 (13) (i) 1.,
23 54.10 (3) (f) 1., or 55.12 (10) (a); whether the applicant is subject to an injunction
24 under s. 813.12 or 813.122, or a tribal injunction, as defined in s. 813.12 (1) (e), issued
25 by a court established by any federally recognized Wisconsin Indian tribe or band,

1 except the Menominee Indian tribe of Wisconsin, that includes notice to the
2 respondent that he or she is subject to the requirements and penalties under s.
3 941.29 and that has been filed with the circuit court under s. ~~806.247 (3)~~ 813.128 (3g);
4 and whether the applicant is prohibited from possessing a firearm under s. 813.125
5 (4m); and to determine if the court has prohibited the applicant from possessing a
6 dangerous weapon under s. 969.02 (3) (c) or 969.03 (1) (c) and if the applicant is
7 prohibited from possessing a dangerous weapon as a condition of release under s.
8 969.01.

9 **SECTION 3.** 806.245 (6) of the statutes is amended to read:

10 806.245 (6) A foreign protection order, as defined in s. ~~806.247 (1) (b)~~ 813.128
11 (1g) (e), issued by an Indian tribal court in this state shall be accorded full faith and
12 credit under s. ~~806.247~~ 813.128.

13 **SECTION 4.** 806.247 (title) of the statutes is repealed.

14 **SECTION 5.** 806.247 (1) (intro.) of the statutes is renumbered 813.128 (1g)
15 (intro).

16 **SECTION 6.** 806.247 (1) (a) of the statutes is renumbered 813.128 (1g) (a).

17 **SECTION 7.** 806.247 (1) (b) of the statutes is renumbered 813.128 (1g) (e) and
18 amended to read:

19 813.128 (1g) (e) “~~Foreign protection~~ Protection order” means any temporary or
20 permanent injunction or order of a civil or criminal court of the United States, of an
21 ~~Indian tribe or of any other state issued for preventing by a tribunal to prevent an~~
22 individual from engaging in abuse, bodily harm, communication, contact,
23 harassment, physical proximity, threatening acts or violence by or to ~~a-~~ another
24 person, other than support or custody orders. This term includes an injunction or
25 order issued under the antistalking laws of the issuing state.

1 **SECTION 8.** 806.247 (2) (title) of the statutes is renumbered 813.128 (2g) (title).

2 **SECTION 9.** 806.247 (2) (a) of the statutes is renumbered 813.128 (2g) (a) and
3 amended to read:

4 813.128 **(2g)** (a) A foreign protection order shall be accorded full faith and
5 credit by the ~~courts~~ tribunals in this state and shall be enforced as if the order were
6 an order of a ~~court~~ tribunal of this state if the order meets all of the following
7 conditions:

8 1. The foreign protection order was obtained after providing the ~~person against~~
9 ~~whom the protection order was sought~~ respondent a reasonable notice and
10 opportunity to be heard sufficient to protect his or her right to due process. If the
11 foreign protection order is an ex parte injunction or order, the ~~person against whom~~
12 ~~the order was obtained~~ respondent shall have been given notice and an opportunity
13 to be heard within a reasonable time after the order was issued sufficient to protect
14 his or her right to due process.

15 2. The ~~court~~ tribunal that issued the order had jurisdiction over the parties and
16 over the subject matter.

17 **SECTION 10.** 806.247 (2) (b) of the statutes is renumbered 813.128 (2g) (c) and
18 amended to read:

19 813.128 **(2g)** (c) A foreign protection order issued against the person who filed
20 a written pleading with a ~~court~~ tribunal for a protection order is not entitled to full
21 faith and credit under this subsection if any of the following occurred:

22 1. No written pleading was filed seeking the foreign protection order against
23 that the person who filed a written pleading with a tribunal for a protection order.

24 2. A cross or counter petition was filed but the ~~court~~ tribunal did not make a
25 specific finding that each party was entitled to a foreign protection order.

1 **SECTION 11.** 806.247 (3) (title) of the statutes is renumbered 813.128 (3g) (title)
2 and amended to read:

3 813.128 (3g) (title) FILING AND ENFORCEMENT OF A FOREIGN PROTECTION ORDER.

4 **SECTION 12.** 806.247 (3) (a) of the statutes is renumbered 813.128 (3g) (a) 1. and
5 amended to read:

6 813.128 (3g) (a) 1. A copy of any foreign protection order, or of a modification
7 of a foreign protection order that is on file with the circuit court, that is authenticated
8 in accordance with an act of congress, an Indian tribal legislative body or the statutes
9 of another state may be filed in the office of the clerk of circuit court of any county
10 of this state. The clerk may not charge a fee for the filing of a foreign protection order.
11 The clerk shall treat any foreign protection order or modification so filed in the same
12 manner as a judgment of the circuit court.

13 **SECTION 13.** 806.247 (3) (b) of the statutes is renumbered 813.128 (3g) (a) 2.

14 **SECTION 14.** 806.247 (3) (c) of the statutes is renumbered 813.128 (3g) (a) 3. and
15 amended to read:

16 813.128 (3g) (a) 3. The sheriff or law enforcement agency that receives a copy
17 of a foreign protection order or of a modification of an order from the clerk under ~~par.~~
18 ~~(b)~~ subd. 2. shall enter the information received concerning the order or modification
19 of an order into the transaction information for management of enforcement system
20 no later than 24 hours after receiving the information. The sheriff or law
21 enforcement agency shall make available to other law enforcement agencies,
22 through a verification system, information on the existence and status of any order
23 or modification of an order filed under this subsection. The information need not be
24 maintained after the order or modification is no longer in effect.

25 **SECTION 15.** 813.12 (6) (am) 1. of the statutes is amended to read:

1 813.12 (6) (am) 1. If an injunction is issued or extended under sub. (4) or if a
2 tribal injunction is filed under s. ~~806.247 (3)~~ 813.128 (3g), the clerk of the circuit court
3 shall notify the department of justice of the injunction and shall provide the
4 department of justice with information concerning the period during which the
5 injunction is in effect and information necessary to identify the respondent for
6 purposes of a firearms restrictions record search under s. 175.35 (2g) (c) or a
7 background check under s. 175.60 (9g) (a).

8 **SECTION 16.** 813.128 (title) of the statutes is amended to read:

9 **813.128 (title) ~~Foreign~~ Uniform interstate enforcement of domestic**
10 **violence protection orders act.**

11 **SECTION 17.** 813.128 (1) (title) of the statutes is repealed.

12 **SECTION 18.** 813.128 (1) (a) of the statutes is renumbered 813.128 (2g) (b) and
13 amended to read:

14 813.128 (2g) (b) A foreign protection order or modification of the foreign
15 protection order that meets the requirements under s. ~~806.247 (2)~~ this section has
16 the same effect as an order issued under s. 813.12, 813.122, 813.123 or 813.125,
17 except that the foreign protection order or modification shall be enforced according
18 to its own terms.

19 **SECTION 19.** 813.128 (1) (b) of the statutes is renumbered 813.128 (3g) (b).

20 **SECTION 20.** 813.128 (1g) (b) of the statutes is created to read:

21 813.128 (1g) (b) “Foreign mutual protection order” means a foreign protection
22 order that includes provisions in favor of both the individual seeking enforcement of
23 the order and the respondent.

24 **SECTION 21.** 813.128 (1g) (c) of the statutes is created to read:

1 813.128 (1g) (c) “Foreign protection order” means a protection order issued by
2 a tribunal other than a tribunal in this state.

3 **SECTION 22.** 813.128 (1g) (d) of the statutes is created to read:

4 813.128 (1g) (d) “Protected individual” means an individual protected by a
5 protection order.

6 **SECTION 23.** 813.128 (1g) (f) of the statutes is created to read:

7 813.128 (1g) (f) “Respondent” means the individual against whom enforcement
8 of a protection order is sought.

9 **SECTION 24.** 813.128 (1g) (g) of the statutes is created to read:

10 813.128 (1g) (g) “Tribunal” means a court, agency, or other entity of a state of
11 the United States, the District of Columbia, Puerto Rico, the United States Virgin
12 Islands, an American Indian tribe or band, or any territory or insular possession
13 subject to the jurisdiction of the United States, authorized by law to issue or modify
14 a protection order.

15 **SECTION 25.** 813.128 (2) of the statutes is renumbered 813.128 (4) and amended
16 to read:

17 813.128 (4) PENALTY. A person who knowingly violates a condition of a foreign
18 protection order or modification of a foreign protection order that is entitled to full
19 faith and credit under ~~s. 806.247~~ this section shall be fined not more than \$1,000 or
20 imprisoned for not more than 9 months or both. If a foreign protection order and any
21 modification of that order that is entitled to full faith and credit under ~~s. 806.247~~ this
22 section remains current and in effect at the time that a court convicts a person for
23 a violation of that order or modification of that order, but that order or modification
24 has not been filed under ~~s. 806.247~~ this section, the court shall direct the clerk of
25 circuit court to file the order and any modification of the order.

1 **SECTION 26.** 813.128 (2g) (a) 3. of the statutes is created to read:

2 813.128 (2g) (a) 3. The order identifies the protected individual and the
3 respondent.

4 **SECTION 27.** 813.128 (2g) (a) 4. of the statutes is created to read:

5 813.128 (2g) (a) 4. The order is currently in effect.

6 **SECTION 28.** 813.128 (3) of the statutes is renumbered 813.128 (5) and amended
7 to read:

8 813.128 (5) IMMUNITY. A law enforcement officer, law enforcement agency,
9 prosecuting attorney, state, local, or Indian tribe or band governmental official, or
10 clerk of circuit court is immune from civil and criminal liability for his or her acts or
11 omissions arising out of a decision related to the filing of a foreign protection order
12 or modification or to the detention or arrest of an alleged violator of a foreign
13 protection order or modification if the act or omission is done in a good faith effort
14 to comply with this section and s. 806.247, 2011 stats.

15 **SECTION 29.** 813.128 (3g) (b) 3. of the statutes is created to read:

16 813.128 (3g) (b) 3. For the purposes of this paragraph, the protection order may
17 be inscribed on a tangible medium or may have been stored in an electronic or other
18 medium if it is retrievable in perceivable form. Presentation of a certified copy of a
19 protection order is not required for enforcement.

20 **SECTION 30.** 813.128 (3g) (c) to (i) of the statutes are created to read:

21 813.128 (3g) (c) If a foreign protection order is not presented, a law enforcement
22 officer of this state may consider other information in determining whether there is
23 probable cause to believe that a valid foreign protection order exists.

24 (d) If a law enforcement officer of this state determines that an otherwise valid
25 foreign protection order cannot be enforced because the respondent has not been

1 notified or served with the order, the officer shall inform the respondent of the order,
2 make a reasonable effort to serve the order upon the respondent, and allow the
3 respondent a reasonable opportunity to comply with the order before enforcing the
4 order.

5 (e) A tribunal of this state shall enforce the provisions of a valid foreign
6 protection order that govern custody, physical placement, and visitation, if the order
7 was issued in accordance with the jurisdictional requirements governing the
8 issuance of custody, physical placement, and visitation orders in the issuing state.

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

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

13 (h) A tribunal of this state may enforce provisions of a foreign mutual protection
14 order that favor a respondent only if the respondent filed a written pleading seeking
15 a protection order from the tribunal of the issuing state and the tribunal of the
16 issuing state made specific findings in favor of the respondent.

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

20 **SECTION 31.** 813.128 (6) of the statutes is created to read:

21 813.128 (6) OTHER REMEDIES. A protected individual who pursues remedies
22 under this section is not precluded from pursuing other legal or equitable remedies
23 against the respondent.

24 **SECTION 32.** 813.128 (7) of the statutes is created to read:

25 813.128 (7) APPLICABILITY. This section applies to all of the following:

1 (a) A request made on or after the effective date of this paragraph [LRB
2 inserts date], for enforcement of a foreign protection order for a violation of the order,
3 regardless of when the order was issued or when the violation occurred.

4 (b) A continuing action for enforcement of a foreign protection order, regardless
5 of when the order was issued or when the action was commenced.

6 **SECTION 33.** 940.20 (1m) (a) of the statutes is amended to read:

7 940.20 (1m) (a). Any person who is subject to an injunction under s. 813.12 or
8 a tribal injunction filed under s. ~~806.247 (3)~~ 813.128 (3g) and who intentionally
9 causes bodily harm to the petitioner who sought the injunction by an act done
10 without the consent of the petitioner is guilty of a Class I felony.

11 **SECTION 34.** 941.29 (1) (f) of the statutes is amended to read:

12 941.29 (1) (f) Enjoined under an injunction issued under s. 813.12 or 813.122
13 or under a tribal injunction, as defined in s. 813.12 (1) (e), issued by a court
14 established by any federally recognized Wisconsin Indian tribe or band, except the
15 Menominee Indian tribe of Wisconsin, that includes notice to the respondent that he
16 or she is subject to the requirements and penalties under this section and that has
17 been filed under s. ~~806.247 (3)~~ 813.128 (3g).

18 **SECTION 35.** 968.07 (1m) of the statutes is amended to read:

19 968.07 (1m) Notwithstanding sub. (1), a law enforcement officer shall arrest
20 a person when required to do so under s. 813.12 (7), 813.122 (10), 813.125 (6), 813.128
21 (1) ~~(3g)~~ (b), or 968.075 (2) (a) or (5) (e).

22 **SECTION 36.** 968.075 (2) (am) of the statutes is amended to read:

23 968.075 (2) (am) Notwithstanding s. 968.07 (1), unless the person's arrest is
24 required under s. 813.12 (7), 813.122 (10), 813.125 (6), or 813.128 ~~(1)~~ (3g) (b) or sub.
25 (5) (e), if a law enforcement officer identifies the predominant aggressor, it is

1 generally not appropriate for a law enforcement officer to arrest anyone under par.

2 (a) other than the predominant aggressor.

3 **SECTION 37.** 973.075 (1) (b) 1m. f. of the statutes is amended to read:

4 973.075 (1) (b) 1m. f. In the commission of a crime under s. 813.12 (8), 813.122
5 (11), 813.123 (10), 813.125 (7), 813.128 ~~(2)~~ (4) or 940.32.

6 **SECTION 38.** 973.075 (1) (bm) of the statutes is amended to read:

7 973.075 (1) (bm) Any property used in the commission of a crime under s.
8 813.12 (8), 813.122 (11), 813.123 (10), 813.125 (7), 813.128 ~~(2)~~ (4) or 940.32, but if the
9 property is encumbered by a bonafide perfected security interest that was perfected
10 before the date of the commission of the current violation and the holder of the
11 security interest neither had knowledge of nor consented to the commission of that
12 violation, the holder of the security interest shall be paid from the proceeds of the
13 forfeiture.

14

(END)

Rose, Stefanie

From: Tuschen, Terry
Sent: Wednesday, July 03, 2013 3:36 PM
To: LRB.Legal
Cc: Tuschen, Terry
Subject: Draft Review: LRB -2141/1 Topic: Uniform Interstate Enforcement of Domestic Violence Protection Orders Act

Please Jacket LRB -2141/1 for the SENATE.