

## 2013 DRAFTING REQUEST

### Bill

Received: 4/10/2013 Received By: phurley  
Wanted: As time permits Same as LRB:  
For: Fred Risser (608) 266-1627 By/Representing: Terry  
May Contact: Drafter: rnelson  
Subject: Dom. Rel. - miscellaneous Addl. Drafters: phurley  
Courts - miscellaneous

Extra Copies:

Submit via email: YES  
Requester's email: Sen.Risser@legis.wisconsin.gov  
Carbon copy (CC) to: peggy.hurley@legis.wisconsin.gov  
rick.champagne@legis.wisconsin.gov

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### Pre Topic:

No specific pre topic given

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### Topic:

Uniform Interstate Enforcement of Domestic Violence Protection Orders Act

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### Instructions:

See Attached

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### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rnelson 5/29/2013			_____			
/P1	rnelson 6/25/2013	scalvin 6/11/2013	phenry 6/11/2013	_____	lparisi 6/11/2013		
/P2		scalvin	rschluet	_____			

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	rnelson 6/27/2013	6/26/2013	6/26/2013	_____	sbasford 6/26/2013	mbarman 7/5/2013	

FE Sent For:

*None  
Needed*

<END>

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Extra Copies: PJD

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peggy.hurley@legis.wisconsin.gov

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**UNIFORM INTERSTATE ENFORCEMENT OF  
DOMESTIC-VIOLENCE PROTECTION ORDERS ACT (2002)**

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# **UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC-VIOLENCE PROTECTION ORDERS ACT (2002)**

## **Prefatory Note**

### **I. Introduction**

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

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

First, many of the existing statutes do not sufficiently explain the core requirements of interstate enforcement of protection orders. For example, many of the state statutes, and the federal legislation, require courts and law enforcement officers to enforce the orders of other States as if they were the protection orders of the enforcing State. This provision, however, does not answer the question of whether state courts and officers are required to enforce provisions of foreign protection orders that would not be authorized by the law of the enforcing State. This question, and others, must be answered if there is to be effective uniform enforcement of protection orders. Second, many of the existing statutes do not specify the procedures state courts and officers must follow in enforcing foreign protection orders. For example, many of the statutes are silent on whether individuals seeking the enforcement of a protection order must register or file the order with the enforcing State before action can be taken on their behalf. This Act resolves the issues left unanswered in existing legislation and provides a uniform scheme for enforcement of these orders.

### **II. The Requirements of Interstate Enforcement**

The Act first defines what it means to accord interstate enforcement to domestic-violence protection orders. These orders must be enforced if the issuing tribunals had jurisdiction over both the parties and the matter under the law of the issuing State and if

the individuals against whom the order is enforced were given reasonable notice and had an opportunity to be heard consistent with the right to due process. If the order was obtained ex parte, this notice and opportunity to be heard must be provided within a reasonable time.

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

### **III. Enforcement Procedures**

The Act also provides uniform procedures for the interstate enforcement of domestic-violence protection orders. The Act envisions that the enforcement of foreign protection orders will require law enforcement officers of enforcing States to rely on probable cause judgments that a valid order exists and has been violated. The Act, however, provides that if a protected individual can provide direct proof of the existence of a facially valid order, by, for example, presenting a paper copy or through an electronic registry, probable cause is conclusively established. If no such proof is forthcoming, the Act provides that if officers, relying on the totality of the circumstances, determine that there is probable cause to believe that a valid protection order exists and has been violated, the order will be enforced. The individual against whom the order is enforced will have sufficient opportunity to demonstrate that the order is invalid when the case is brought before the enforcing tribunal. Law enforcement officers, as well as other government agents, will be encouraged to rely on probable cause judgments by the Act's inclusion of an immunity provision, protecting agents of the government acting in good faith.

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

**UNIFORM INTERSTATE ENFORCEMENT OF  
DOMESTIC-VIOLENCE PROTECTION ORDERS ACT (2002)**

**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, 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.

(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.

### Comment

The term “protection order” generally includes only those orders issued under the domestic-violence or family-violence laws of the issuing State and protection orders issued outside of the domestic or family violence context are not enforceable under the provisions of this Act. The Act, however, does provide for the enforcement of orders issued under the anti-stalking statutes of the issuing State. These statutes will frequently be readily identifiable as specifically proscribing stalking. *See e.g.*, Tex. Penal Code Ann. § 42.072 (Vernon 2002). Anti-stalking statutes may also be found in separate provisions of laws regulating a broader range of activity (e.g., harassment); these laws, however, must contain provisions specifically proscribing stalking. *See e.g.*, 18 Pa. Cons. Stat. Ann. § 5504(a.1) (West 2000). The scope of enforceable protection orders is further limited by the provisions of Sections 3(b) and (c). Courts should construe the meaning of domestic-violence, family-violence, or anti-stalking law broadly in order to further the purpose of the Act, the effective interstate enforcement of protection orders; protection orders, for example, issued under the juvenile law of the issuing State should be enforced if they were issued in the domestic or family violence context. 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(g).

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

### **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 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 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 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 has had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the rights of the respondent to due process.

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

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

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

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

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

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

#### **Comment**

Subsection (a) implements the core purpose of the Act. Effective interstate enforcement of protection orders is founded on the principle that enforcing States must enforce all the substantive terms of a foreign protection order, including terms that provide relief that a tribunal of the enforcing State would lack power to provide, but for this Act. This provision means that 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 allows a court's protection order to include terms that concern the payment of a specified and definite sum of money

(as opposed to an ongoing support obligation) or 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 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.

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. While it is not the purpose of this section to surpass the constitutional restraints against States enforcing the criminal laws 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. Attrill*, 146 U.S. 657 (1892), 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. (Protection orders procured by a third party acting as the legal representative of the protected individual, such as the guardian of a child or an incompetent adult, recognize these persons' status vis-a-vis the protected individual and satisfy the standing requirement of Section 3(b).) 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. For example, orders issued by criminal



courts that provide 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.

Subsection (c) further defines the scope of enforceable protection orders under the Act. It 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. This Act, however, does not provide for the enforcement of orders governing custody and visitation rights that are not included in a protection order.

The Act does not provide for the enforcement of orders or provisions of foreign protection orders governing support; these orders or provisions, however, should be enforced under the specific laws governing the issuance, modification, and enforcement of support 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. The Act is consistent with the federal Violence Against Women Act, 18 U.S.C. Sec. 2266(5) (as amended by The Violence Against Women Act of 2000, Pub. L. No. 106-386) 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.

Subsection(d) 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 (f). 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 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. Sec. 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, Sec. 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 federal Parental Kidnaping Prevention Act, 28 U.S.C. Sec. 1738A, requires greater interstate enforcement of child custody orders and the federal Personal Responsibility and Work Opportunity Reconciliation Act, 110 Stat. 2105 (1996), requires that States, in order to facilitate the enforcement of support orders, adopt the provisions of the Uniform Interstate Family Support Act. The Violence Against Women Act extends the principle of these laws to the subject of the interstate enforcement of domestic-violence protection orders.

Subsection (g), adapted from the federal Violence Against Women Act, 18 U.S.C. Sec. 2265(c), addresses the enforcement of mutual foreign protection orders, which contain provisions protecting both the protected individual and the respondent. 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. 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 (d), thus qualifying the protection order for interstate enforcement. Use of the following certification form is recommended.

\_\_\_\_\_ (Name), : IN THE \_\_\_\_\_ COURT OF  
 Plaintiff : \_\_\_\_\_ (County/Judicial District)  
 : \_\_\_\_\_ (State/Territory)  
 vs. : CIVIL ACTION – LAW  
 : PROTECTION/RESTRAINING ORDER  
 \_\_\_\_\_ (Name), :  
 Defendant : Docket No. \_\_\_\_\_, 200\_\_\_\_

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 Kidnaping 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:

#### **SECTION 4. NONJUDICIAL ENFORCEMENT OF ORDER.**

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

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

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

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

#### **Comment**

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

protection order. Subsection (a) 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. This probable cause determination must meet the constitutional standards for determining probable cause. If it is later determined that no such order was in place or the order was otherwise unenforceable, 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 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.]

### **Comment**

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

agencies across the State.

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. In addition, the federal Violence Against Women Act, as amended by the Violence Against Women Act of 2000 (Pub. L No.106-386), 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. This 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.

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

#### **Comment**

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.

#### **Comment**

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

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

**SECTION 9. 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.



**Comment**

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 Violence Against Women Act requiring interstate enforcement of domestic-violence protection orders will be held unconstitutional. One of main purposes of this Act is to provides 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 Violence Against Women Act 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 of this [Act]] for violations of a foreign protection order occurring before [the effective date of this [Act]] is governed by this [Act].

**Comment**

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*, 450 U.S. 24, 28 (1981), 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.



## 1995 ASSEMBLY BILL 793

January 18, 1996 - Introduced by Representatives KRUG, RUTKOWSKI, ALBERS, BALDWIN, BOYLE, GOETSCH, GREEN, GRONEMUS, HANSON, KREUSER, LA FAVE, MUSSER, NOTESTEIN, OLSEN, OWENS, PLACHE, R. POTTER, ROBSON, RYBA, SCHNEIDERS, WIRCH, R. YOUNG, ZIEGELBAUER, KLUSMAN, BALDUS, PLOMBON and RILEY, cosponsored by Senators HUELSMAN, BUETTNER, BURKE, CLAUSING, DARLING, DRZEWIECKI, FARROW, GROBSCHMIDT, A. LASEE, PANZER and ROSENZWEIG. Referred to Committee on Judiciary.

- 1 **AN ACT to create** 806.247 of the statutes; **relating to:** giving full faith and credit  
2 to orders providing protection to individuals.

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### *Analysis by the Legislative Reference Bureau*

Under current law, a foreign judgment issued by a court of the United States or of any other court that is entitled to full faith and credit in this state may be filed in the office of the clerk of circuit court and is subject to the same procedures and defenses as a judgment issued in a court of this state. Current law provides that the judicial records, orders and judgments of an Indian tribal court in Wisconsin have the same full faith and credit in the courts of this state as the records, orders and judgments of any other governmental entity if certain conditions are met.

This bill gives full faith and credit to certain permanent and temporary orders that a court of the United States, an Indian tribal court or a court of any other state issues to protect a person from abuse, bodily harm, harassment and other forms of contact or violence. To receive full faith and credit and thus be enforceable in this state, the bill requires that a protection order be issued by a court that has jurisdiction over the parties and the subject matter. In addition, the court that issued the protection order must have provided the person against whom the protection order was sought a reasonable notice and opportunity to be heard sufficient to protect his or her right to due process. Under the bill, a protection order issued against the person who filed a written pleading with a court for a protection order for his or her protection is not eligible for full faith and credit in the courts of this state if no written pleading was filed in the action requesting that a protection order be issued against the person who filed for a protection order or if a such a pleading was filed but the court did not make a finding that a party was entitled to a protection order.

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

1           **SECTION 1.** 806.247 of the statutes is created to read:

2           **806.247 Full faith and credit for protection orders.** (1) **DEFINITIONS.** In  
3 this section:

4           (a) “Bodily harm” has the meaning given in s. 939.22 (4).

5           (b) “Partner” means a person who shares a child in common.

6           (c) “Protection order” means any temporary or permanent injunction or order  
7 issued for preventing abuse, bodily harm, communication, contact, harassment,  
8 physical proximity, threatening acts or violence by or to a person, other than support  
9 or custody orders, of a court of the United States, an Indian tribal court or a court of  
10 this state or any other state.

11           (2) **STATUS OF A PROTECTION ORDER.** (a) Except as provided in par. (b), a  
12 protection order is entitled to full faith and credit in this state if all of the following  
13 occurred:

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

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

22           (b) A protection order issued against the person who filed a written pleading  
23 with a court for a protection order for his or her protection against a spouse, a former  
24 spouse, an adult family member, as defined in s. 46.95 (1) (b), an adult household

1 member, as defined in s. 46.95 (1) (c), or a partner is not entitled to full faith and credit  
2 under this subsection if any of the following occurred:

3 1. No cross or counter petition, complaint or other written pleading was filed  
4 in the action requesting that a protection order be issued against the person who filed  
5 for a protection order.

6 2. A cross or counter petition, complaint or other written pleading was filed in  
7 the action requesting that a protection order be issued against the person who filed  
8 for a protection order but the court hearing the action did not make a specific finding  
9 that a party was entitled to a protection order.

10 **(3) FILING OF A PROTECTION ORDER.** A copy of any protection order authenticated  
11 in accordance with the act of congress, an Indian tribal legislative body or the  
12 statutes of this or another state may be filed in the office of the clerk of circuit court  
13 of any county of this state. The clerk shall treat any protection order so filed in the  
14 same manner as a judgment of the circuit court. A protection order filed under this  
15 subsection that meets the requirements under sub. (2) has the same effect and is  
16 subject to the same procedures, defenses and proceedings for reopening, vacating or  
17 staying as a judgment of a circuit court of this state and may be enforced or satisfied  
18 in the same manner.

19 (END)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT *to create* 813.129 of the statutes; **relating to:** the Uniform Interstate  
2 Enforcement of Domestic Violence Protection Orders Act.

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*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided with a later version.

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

3 SECTION 1. 813.129 of the statutes is created to read:

4 **813.129 Uniform Interstate Enforcement of Domestic Violence**  
5 **Protection Orders Act. (1) DEFINITIONS.** In this section:

6 (a) "Foreign protection order" means a protection order issued by a tribunal of  
7 another state.

8 (b) "Issuing state" means the state whose tribunal issues a protection order.

9 (c) "Mutual foreign protection order" means a foreign protection order that  
10 includes provisions in favor of both the protected individual seeking enforcement of  
11 the order and the respondent.

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

2 (e) “Protection order” means an injunction or other order, issued by a tribunal  
3 under the domestic violence or family violence laws of the issuing state, to prevent  
4 an individual from engaging in violent or threatening acts against, harassment of,  
5 contact or communication with, or physical proximity to, another individual. The  
6 term includes an injunction or other order issued under the anti-stalking laws of the  
7 issuing state.

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

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

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

16 **(2) JUDICIAL ENFORCEMENT OF ORDER.** (a) A person authorized by the law of this  
17 state to seek enforcement of a protection order may seek enforcement of a valid  
18 foreign protection order in a tribunal of this state. The tribunal shall enforce the  
19 terms of the order, including terms that provide relief that a tribunal of this state  
20 would lack power to provide but for this section. The tribunal shall enforce the order,  
21 whether the order was obtained by independent action or the order was obtained in  
22 another proceeding, if it is an order issued in response to a complaint, petition, or  
23 motion filed by or on behalf of an individual seeking protection. In a proceeding to  
24 enforce a foreign protection order, the tribunal shall follow the procedures of this  
25 state for the enforcement of protection orders.

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

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

8           (d) A foreign protection order is valid if it satisfies all of the following:

- 9           1. The order identifies the protected individual and the respondent.
- 10          2. The order is currently in effect.
- 11          3. The order was issued by a tribunal that had jurisdiction over the parties and  
12 subject matter under the law of the issuing state.
- 13          4. The order was issued after the respondent was given reasonable notice and  
14 had an opportunity to be heard before the tribunal issued the order or, in the case of  
15 an ex parte order, the respondent was given notice and has had or will have an  
16 opportunity to be heard within a reasonable time after the order was issued, in a  
17 manner consistent with the due process rights of the respondent.

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

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

22          (g) A tribunal of this state may enforce provisions of a mutual foreign protection  
23 order that favor a respondent only if the respondent filed a written pleading seeking  
24 a protection order from the tribunal of the issuing state and the tribunal of the  
25 issuing state made specific findings in favor of the respondent.



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

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

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

20           (d) Registration or filing of an order in this state is not required for the  
21 enforcement of a valid foreign protection order under this section.

22           **(4) REGISTRATION OF ORDER.** (a) Any individual may register a foreign protection  
23 order in this state. To register a foreign protection order, an individual shall do any  
24 of the following:

1           1. Present a certified copy of the order to [the state agency responsible for the  
2 registration of such orders].

3           2. Present a certified copy of the order to [an agency designated by the state]  
4 and request that the order be registered with [the agency responsible for the  
5 registration of such orders].

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

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

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

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

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

22          **(5) IMMUNITY.** This state or a local governmental agency, or a law enforcement  
23 officer, prosecuting attorney, clerk of court, or state or local governmental official  
24 acting in an official capacity, is immune from civil and criminal liability for an act or  
25 omission arising out of the registration or enforcement of a foreign protection order

**SECTION 1**

1 or the detention or arrest of an alleged violator of a foreign protection order if the act  
2 or omission was done in good faith in an effort to comply with this section.

3 **(6) OTHER REMEDIES.** A protected individual who pursues remedies under this  
4 section is not precluded from pursuing other legal or equitable remedies against the  
5 respondent.

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

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

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

12 **(END)**



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

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

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***Analysis by the Legislative Reference Bureau***

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

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

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

4 **SECTION 2.** 806.247 (1) (intro.) of the statutes is renumbered 813.129<sup>P</sup> (1g).

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

6 **SECTION 4.** 806.247 (1) (b) of the statutes is renumbered 813.128 (1g) <sup>E</sup>(b) and

7 amended to read:

8 813.128 (1g) <sup>(ce)</sup>(b) "~~Foreign protection~~ <sup>Protection</sup> order" means any temporary or permanent

9 injunction or order of a civil or criminal court of the United States, of an Indian tribe

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

History: 1995 a. 306.

6 **SECTION 5.** 806.247 (2) of the statutes is renumbered 813.128 (2<sup>m</sup>) and  
 7 amended to read:

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

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

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

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

128 (2g) (c)

a written pleading with a tribunal

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

tribunal

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

History: 1995 a. 306.

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

AND ENFORCEMENT

111

7 813.128 (3g) ~~FILING~~ OF A FOREIGN PROTECTION ORDER. (a) A copy of any foreign  
8 protection order, or of a modification of a foreign protection order that is on file with  
9 the circuit court, that is authenticated in accordance with an act of congress, an

10 Indian tribal legislative body or the statutes of another state may be filed in the office  
11 The clerk may not charge a fee for the filing of a foreign

of the clerk of circuit court of any county of this state.) The clerk shall treat any foreign protection  
order.

12 protection order or modification so filed in the same manner as a judgment of the  
13 circuit court.

12.  
(b)

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

3.  
(c)

19 The sheriff or law enforcement agency that receives a copy of a foreign  
20 protection order or of a modification of an order from the clerk under par. (b) shall  
21 enter the information received concerning the order or modification of an order into  
22 the transaction information for management of enforcement system no later than 24  
23 hours after receiving the information. The sheriff or law enforcement agency shall  
24 make available to other law enforcement agencies, through a verification system,

SECTION 6

(19)

1 information on the existence and status of any order or modification of an order filed  
2 under this subsection. The information need not be maintained after the order or  
3 modification is no longer in effect.

History: 1995 a. 306.

318-128(19)(b)

4 (a) "Foreign protection order" means a protection order issued by a tribunal of  
5 another state.

6 (b) "Issuing state" means the state whose tribunal issues a protection order.

813-128(19)(c)

7 (c) "Mutual foreign protection order" means a foreign protection order that  
8 includes provisions in favor of both the protected individual seeking enforcement of  
9 the order and the respondent.

10 (19)(d) (d) "Protected individual" means an individual protected by a protection order.

11 (e) "Protection order" means an injunction or other order, issued by a tribunal  
12 under the domestic violence or family violence laws of the issuing state, to prevent  
13 an individual from engaging in violent or threatening acts against, harassment of,  
14 contact or communication with, or physical proximity to, another individual. The  
15 term includes an injunction or other order issued under the anti-stalking laws of the  
16 issuing state.

17 (19)(f) (f) "Respondent" means the individual against whom enforcement of a  
18 protection order is sought.

19 (g) "State" means a state of the United States, the District of Columbia, Puerto  
20 Rico, the United States Virgin Islands, or any territory or insular possession subject  
21 to the jurisdiction of the United States. The term includes an American Indian tribe  
22 or band that has jurisdiction to issue protection orders.

23 (19)(g) (h) "Tribunal" means a court, agency, or other entity authorized by law to issue  
24 or modify a protection order.

1           (2) JUDICIAL ENFORCEMENT OF ORDER. (a) A person authorized by the law of this  
 2 state to seek enforcement of a protection order may seek enforcement of a valid  
 3 foreign protection order in a tribunal of this state. The tribunal shall enforce the  
 4 terms of the order, including terms that provide relief that a tribunal of this state  
 5 would lack power to provide but for this section. The tribunal shall enforce the order,  
 6 whether the order was obtained by independent action or the order was obtained in  
 7 another proceeding, if it is an order issued in response to a complaint, petition, or  
 8 motion filed by or on behalf of an individual seeking protection. In a proceeding to  
 9 enforce a foreign protection order, the tribunal shall follow the procedures of this  
 10 state for the enforcement of protection orders.

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

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

18           (d) A foreign protection order is valid if it satisfies all of the following:

19           1. The order identifies the protected individual and the respondent.

20           2. The order is currently in effect.

21           3. The order was issued by a tribunal that had jurisdiction over the parties and  
 22 subject matter under the law of the issuing state.

23           4. The order was issued after the respondent was given reasonable notice and  
 24 had an opportunity to be heard before the tribunal issued the order or, in the case of  
 25 an ex parte order, the respondent was given notice and has had or will have an



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1 opportunity to be heard within a reasonable time after the order was issued, in a  
2 manner consistent with the due process rights of the respondent.

3 <sup>128</sup>(e) A foreign protection order valid on its face is prima facie evidence of its  
4 validity.

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

7 (g) A tribunal of this state may enforce provisions of a mutual foreign protection  
8 order that favor a respondent only if the respondent filed a written pleading seeking  
9 a protection order from the tribunal of the issuing state and the tribunal of the  
10 issuing state made specific findings in favor of the respondent.

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

21 <sup>128(39)(c)</sup> ~~(b)~~ If a foreign protection order is not presented, a law enforcement officer of  
22 this state may consider other information in determining whether there is probable  
23 cause to believe that a valid foreign protection order exists.

24 <sup>128(39)(d)</sup> ~~(c)~~ (e) 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 (d) Registration or filing of an order in this state is not required for the  
6 enforcement of a valid foreign protection order under this section.

7 (4) REGISTRATION OF ORDER. (a) Any individual may register a foreign protection  
8 order in this state. To register a foreign protection order, an individual shall do any  
9 of the following:

10 1. Present a certified copy of the order to [the state agency responsible for the  
11 registration of such orders].

12 2. Present a certified copy of the order to [an agency designated by the state]  
13 and request that the order be registered with [the agency responsible for the  
14 registration of such orders].

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

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

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

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

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

8 ~~(5) IMMUNITY. This state or a local governmental agency, or a law enforcement  
 9 officer, prosecuting attorney, clerk of court, or state or local governmental official  
 10 acting in an official capacity, is immune from civil and criminal liability for an act or  
 11 omission arising out of the registration or enforcement of a foreign protection order  
 12 or the detention or arrest of an alleged violator of a foreign protection order if the act  
 13 or omission was done in good faith in an effort to comply with this section.~~

14 (6) OTHER REMEDIES. A protected individual who pursues remedies under this  
 15 section is not precluded from pursuing other legal or equitable remedies against the  
 16 respondent.

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

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

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

23 ~~SEC 813.128 (1) (a) (i) is repealed~~  
 SECTION 7. 813.128 of the statutes is amended to read:

24 **813.128 Foreign protection orders. (1) ENFORCEMENT OF FOREIGN**

25 PROTECTION ORDERS. (a) A foreign protection order or modification of the foreign

(128(22) (b)

*128(22)(b)*

*becomes 128(39)*

*becomes*

1 protection order that meets the requirements under s. 806.247 (2) has the same effect  
2 as an order issued under s. 813.12, 813.122, 813.123 or 813.125, except that the  
3 foreign protection order or modification shall be enforced according to its own terms.

(b) A law enforcement officer shall arrest and take the subject of a foreign  
5 protection order into custody if all of the following occur:

6 1. A person protected under a foreign protection order presents the law  
7 enforcement officer with a copy of a foreign protection order issued against the  
8 subject, or the law enforcement officer determines that a valid foreign protection  
9 order exists against the subject through communication with appropriate  
10 authorities. If a law enforcement officer examines a copy of a foreign protection  
11 order, the order, with any modification, is presumed to be valid if the order or  
12 modification appears to be valid on its face and circumstances suggest that the order  
13 and any modification are in effect.

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

16 *128(4)* (2) PENALTY. A person who knowingly violates a condition of a foreign  
17 protection order or modification of a foreign protection order that is entitled to full  
18 faith and credit under s. ~~806.247~~ *this section* shall be fined not more than \$1,000 or imprisoned  
19 for not more than 9 months or both. If a foreign protection order and any modification  
20 of that order that is entitled to full faith and credit under s. ~~806.247~~ *this section* remains current  
21 and in effect at the time that a court convicts a person for a violation of that order  
22 or modification of that order, but that order or modification has not been filed under  
23 s. ~~806.247~~ *this section*, the court shall direct the clerk of circuit court to file the order and any  
24 modification of the order.

1 <sup>128 (5)</sup> ~~(3)~~ IMMUNITY. A law enforcement officer, law enforcement agency, prosecuting  
2 attorney <sup>state or local governmental officials</sup> or clerk of circuit court is immune from civil and criminal liability for his  
3 or her acts or omissions arising out of a decision related to the filing of a foreign  
4 protection order or modification or to the detention or arrest of an alleged violator of  
5 a foreign protection order or modification if the act or omission is done in a good faith  
6 effort to comply with this section ~~and s. 806.247.~~

7 History: 1995 a. 306.

(END)