

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2076

2001 SENATE JUDICIARY

SB 2076

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2076

Senate Judiciary Committee

Conference Committee

Hearing Date January 16th, 2001

Tape Number	Side A	Side B	Meter #
I	X		26.0
I	X	X	0.0-36.1
Committee Clerk Signature			

Minutes: SENATOR TRAYNOR opened the hearing on SB 2076: A BILL FOR AN ACT TO CREATE AND ENACT A NEW CHAPTER TO TITLE 14 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO THE UNIFORM INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT; TO AMEND AND REENACT SECTION 14-07.1-06 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO PENALTIES FOR VIOLATION OF A PROTECTION ORDER; TO REPEAL SECTION 14-07.1-02.2 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO FOREIGN DOMESTIC VIOLENCE PROTECTION ORDERS; TO PROVIDE A PENALTY; AND TO PROVIDE FOR APPLICATION.

JAY BURINGURD, representing the Uniform Laws Commission. Some states have adopted this act. Goes on further to explain the bill. Current law page 2, line 5 includes harassment.. Current law doesn't include page 3 line 31, electronic transactions or tangible medium. This amendment respects immunity. Current law provides protection to law officer; after this law is

passed it will expand protection. Current law provides for a class B, this will change to a class A.

SENATOR NELSON What's the difference between new law and old law. We get along fine with are current law, why change?

JAY BURINGURD ND is more protective.

SENATOR LYSON how does law enforcement know about this? Most counties can't do this.

JAY BURINGURD I don't know what other procedures are in other counties. If there is a registry, law officers can get them.

SENATOR TRAYNOR could a temporary restraining order be part of a protection order?

JAY BURINGURD the requirements must be valid under line 8, page 3.

SENATOR TRAYNOR page 4 officer determines; does this place a burden on the officer, is he now the judge?

JAY BURINGURD no.

SENATOR TRENBEATH officer can determine probable cause. What happens when respondent convinces him he hasn't been served?

JAY BURINGURD I don't know.

SENATOR TRENBEATH page 2 line 18. We can do for others that we can't do for our own.

JAY BURINGURD valid concern. They can enforce order because it was issued in other state.

SENATOR TRAYNOR is existing law a uniform law?

JAY BURINGURD no, but similar.

SENATOR TRAYNOR when was this bill created?

JAY BURINGURD summer 2000.

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SENATOR TRAYNOR is this a mistake in drafting, regarding the stiffing of the penalty of the crime.

JAY BURINGURD yes.

SENATOR WATNE page 5 line 6- don't we have fees already established.

JAY BURINGURD it's waved for these types of orders.

SENATOR TRENBEATH line 12 page 5- is this a typo

JAY BURINGURD yes.

BONNIE PALLECK, speaking on behalf of the ND council on Abused Women's services.

Testifies in favor of SB 2076. (testimony attached)

**SB 2076 end of side A**

SENATOR TRAYNOR these are a additions to the Bill?

BONNIE PALLECK yes. My testimony tracks the amendments.

SENATOR TRAYNOR is the current law working well?

BONNIE PALLECK we believe it is.

SENATOR TRAYNOR there are 18 amendments to your proposed bill. Would, if these are implemented, this mirror the uniform state law?

BONNIE PALLECK I believe so.

MR. OLSON, representing state attorney and police officers, supports SB 2076. Exposure will be potential order. Valid or invalid (meter # 30) Cop at risk. Line 10 page 5. Explains amendments.

SENATOR TRAYNOR would you write that down?

MR OLSON (32.8) repeats himself.

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SENATOR TRAYNOR closed the hearing on SB 2076. After the discussion SENATOR NELSON MOTIONED TO DO NOT PASS. SECONDED BY SENATOR BERCIER. THE ROLL CALL VOTE INDICATED 7 YEAS, 0 NAYS, AND 0 ABSENT AND NOT VOTING.

10151.0201  
Title.

Prepared by the Legislative Council staff

January 15, 2001

PROPOSED AMENDMENTS TO SENATE BILL NO. 2076

Page 5, line 15, replace "A" with "Q"

Renumber accordingly

Date: January 16th, 2001  
 Roll Call Vote #: 1

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2076**

Senate Judiciary Committee

Subcommittee on \_\_\_\_\_  
 or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Nelson Seconded By Bercier

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.	X				

Total (Yes) 7 No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Nelson

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE (410)**  
January 16, 2001 5:00 p.m.

**Module No: SR-06-1101**  
**Carrier: C. Nelson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2076: Judiciary Committee (Sen. Traynor, Chairman) recommends DO NOT PASS**  
**(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2076 was placed on the**  
**Eleventh order on the calendar.**

2001 TESTIMONY

SB 2076

2022  
2022-8370  
2022-NEAJ  
Crisis Center  
2022

AKA  
natives for  
families  
1-888-662-7378  
DICKINSON

Domestic Violence and  
Rape Crisis Center  
225-4506  
SLENDALE

Kedish House  
349-4729  
FARGO

Rape and Abuse Crisis Center  
300-344-7273  
FORT BERTHOLD RESERVATION

Coalition Against  
Domestic Violence  
527-4171  
FORT YATES

Tender Heart Against  
Domestic Violence  
854-3402  
GRAFTON

Tri-County Crisis  
Intervention Center  
352-4242  
GRAND FORKS

Domestic Violence  
Crisis Center  
JAMES TOWN

T.A.F.E. Shelter  
388-353-7233  
MCLEAN COUNTY  
McLean Family

Resource Center  
300-551-8543  
MERCER COUNTY

Women's Action and  
Resource Center  
873-2274  
MINOT

Domestic Violence Crisis  
Center  
352-2258  
RANSOM COUNTY

Family Resource Network  
383-5001  
STANLEY

Domestic Violence Program,  
NW ND  
323-3033  
VALLEY CITY

Abused Persons Outreach  
Center  
3008  
WILLISTON

Family Crisis Center  
WILLISTON

Family Crisis Shelter  
572-0707

Senator Jack Traynor  
Chair, Senate Judiciary Committee  
SB 2076  
January 16, 2001

Chair Traynor and Members of the Committee:

My name is Bonnie Palecek and I am speaking on behalf of the ND Council on Abused Women's Services. I am here in support of SB 2076 and to offer some amendments which we believe would maintain the overall intent and content of the proposed Uniform Act, while preserving the clarity and essential provisions of our current North Dakota statute.

14-07.1-02.2, North Dakota's statute relating to full faith and credit for protection orders, was passed just last session, in 1999. It was crafted to comply with the existing statute provisions under the federal Violence Against Women Act passed 1994. In the interim period between the passage of the federal Act and the passage of the ND statute, we relied on ND Attorney General's opinion which affirmed the authority of courts in ND to recognize so-called "foreign protection orders" with full faith and credit.

The federal Full Faith and Credit Act signified a monumental shift in judicial thinking which reflected an acknowledgment of the realities of someone caught in a domestic violence situation. For example, consider a battered woman in Austin, Texas before 1995 who decides to leave and flees home to North Dakota. She has been in an Austin shelter and received a protection order with the assistance of advocates there, but she wants to come home to her parents in Bismarck.

But what about her protection order? It isn't good here, and if she has to apply for another one, she will need to reveal where she is because her abuser will receive notice of the new hearing time and place (as well he should under his due process rights).

What the full faith and credit provisions of both federal and state law do for her now is to allow her protection order to be enforced in North Dakota immediately *as though it had been issued here*. If her abuser stalks her here, and she produces the order for law enforcement, they must enforce it just like they would any other order. The same holds true for tribal orders. Every jurisdiction must honor every other jurisdiction's orders provided that.

- (1) the respondent knew about the order and was given a chance to be heard according to due process rights;
- (2) the order was currently in effect;
- (3) the issuing court had jurisdiction over the parties and the subject matter.



The order can be presented to the officer in any form. A faxed order, or one from a copy machine will be enough if the officer believes it to be valid. In fact, the officer may even take the victim's word for it that an order exists and has been served, if he/she has probable cause to believe that is true.

As I said previously, the Full Faith and Credit Act stemmed from a simple concept with sweeping implications. It represents a huge shift, and frankly the federal statute gave few guidelines to states and tribes as to how it should be implemented.

And so states did the best they could to honor the federal law and pass implementing statutes. To date, most of the states have passed such legislation. In North Dakota, our coalition was assisted by attorneys from the National Full Faith and Credit Project who specialize in this Act and its implementation from the perspective of victim advocacy. They provided training here as well as assistance in drafting the current ND statute.

Over the last two years, training materials have been developed on a national level as well as here in North Dakota in order to encourage implementation of the Act. That training continues, and a multi-disciplinary team appointed by our Supreme Court will be attending a conference in Seattle next month.

I share this history with you to reveal the depth of our investment in this issue. On behalf of victims everywhere in the country, we have a lot at stake in not only the concept of full faith and credit, but its effective implementation as well.

And so it is in that spirit that I offer a series of amendments which we believe will allow us to build on the training and protocol development which has already been initiated as well as taking advantage of the momentum and added benefits of being part of a national movement toward uniform laws in this area.

Our proposed amendments fall into three categories:

- (1) those needed to mesh the proposed new statute with current ND law and practice;
- (2) those necessary for clarity;
- (3) those which we believe would better reflect the intent of the federal provisions of 18 USC 2265 and 2266 (200).

First, allow me to suggest three amendments in the first category:

(1) In line 24, on p. 4, relating to the registering of the order, there is a need to clarify that in ND it is law enforcement, not the clerk of court, who enters orders into a "registry" (in ND currently that is CWIS, current warrant information system). Eventually, the registry will be tied into a nationwide FBI Registry; therefore, we would suggest adding language from our current statute after "issuing state" in l. 24: "If a foreign order is filed under this subsection, the clerk of district court shall transmit a copy of the order to the appropriate local law enforcement agency as provided under section 14-07.1-03."

The second amendment would preserve language in ND's current statute which makes it a crime to falsify an order. From 14-07.1-02.2 (4): "Any person who intentionally provides a law enforcement officer with a copy of a foreign domestic violence protection order known by that person to be false or invalid, or who denies having been served with a protection order when that person has been served with such an order, is guilty of a class A misdemeanor."

The third amendment would honor the equal participation of tribal courts in full faith and credit implementation by using the language in our current statute in the definition: p. 2 (ll 11-14) "State" means a state of the United States, Indian tribe, the District of Columbia, or a commonwealth territory, or possession of the United States." This language affords equal footing to tribes rather than including them as an afterthought.

The second category of amendments we believe would enhance clarity and thus make training and using the statute in the field easier. It is essential that the statute be understandable, particularly to the law enforcement officers and victim advocates who use it in the field.

(1) The first amendment suggested here would add "or tribe" to p. 1, line 21, after "state," and add "or tribe" after "issuing state" on l. 22 as well as after "means the state" also on l. 22. This would clarify an important issue for us in North Dakota, an issue not without difficulty, that state and tribal courts, at least relating to this Act, have equal standing.

(2) The second clarifying amendment is on p. 3 ll. 10-11. Language in 2076 seems very vague. The respondent is given an opportunity to be heard "within a reasonable time after the issuing of the order consistent with the rights of the respondent to due process." By adding after "within" on l. 11 "the time required by the law of the issuing state, or, in any event within" a reasonable time, we feel clearer parameters would be set. This also tracks the language of the federal law and points us first to the time frame designated by the law of the issuing state. This also underscores the intent of the federal law.

In addition, the language in l. 10 is unclear and may be misleading. Here, in the case of an ex parte order, 2076 states that "the respondent was given notice and afforded the opportunity to be heard." This could be interpreted to mean that the full hearing must have been held before the order is deemed valid, which, of course, defeats the whole intent to honor ex parte orders which meet the conditions set forth.

We suggest that this could be remedied by stating the respondent "was given notice of an opportunity to be heard" rather than "afforded" this opportunity (l. 10).

(3) Next, on p. 3, line 22, we suggest tracking the federal language once again for clarity and replacing "in favor of the respondent" with: "findings that each party was entitled to such an order."

(4) The fourth amendment in this category would replace language in 2076 which seems very cumbersome. Language in our current ND statute already provides for

accepting orders in any form, and in fact clarifies that that "source" may include verbal statements. Instead of ll. 30,31 (p. 3) and ll. 1,2 (p. 4), we suggest inserting:

"a law enforcement officer may rely upon any foreign domestic violence protection order that has been provided to the officer in any form. A law enforcement officer may rely on the statement of the person protected by the order that the order is in effect and that the respondent was personally served with a copy of the order."

This would make very clear that, again tracking federal law, if it is at all reasonable to believe that a valid order from another jurisdiction is in effect, it should be enforced.

(5) A fifth amendment would simply add clarifying language after "exists" on p. 4 (l. 6). This language would give guidance to officers as to where to check out the existence of an order when the actual order is not presented. We suggest adding "such as contacting law enforcement in the issuing jurisdiction, the issuing tribunal, or by checking the National Crime Information Center's (NCIC) protection order file."

(6) Finally, on p. 5, l. 5, we would request clarifying that no fees may be charged for certified copies of foreign orders, which would be consistent with the requirement of federal law that no such fees may be charged.

The last category of suggested amendments relates to changes in the scope of the proposed Uniform Act and what we perceive to be discrepancies between the Uniform Act and the provisions of 18 U.S.C. 2265-2266 (2000). Some of these changes in scope were just embodied in federal law with the passage of VAWA II in October, 2000.

These new federal provisions are clearly the most controversial, and some differences of opinion do exist. It is our position, however, that ultimately federal law takes precedence over a more narrowly drawn state law, and so it only makes sense that our state statute track the federal law as closely as possible, the proposed Uniform Act notwithstanding.

(1) Definition of Protection Order:

The definition of protection order under the federal law is very broad. It includes "any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person."

SB2076 would limit orders eligible for full faith and credit to "orders issued under the domestic violence or family violence laws" of the issuing state.

We propose leaving out "under the domestic violence or family violence laws" (p. 2, ll. 5,6) because this definition is more limiting than the definition in the federal law. For example, an order against stalking involving domestic violence (for us in ND a disorderly conduct order) would be included for full faith and credit under federal law but not in this statute. Stalking is clearly a crime which often relates to domestic violence and we feel

the intent of the federal VAWA was to include crimes such as this. In fact, VAWA even created a new federal crime of interstate stalking.

Similarly, there is an issue of scope with p. 2, ll. 24-26. On their face, these lines are not understandable to a non-lawyer, but apparently "a tribunal of this state may not enforce an order issued by a tribunal that does not recognize the standing of a protected individual to seek enforcement of the order" refers to criminal orders. Criminal orders are clearly included within the scope of federal law, and so once again the Uniform Act is narrowing the scope of the federal protections. We propose eliminating ll. 24-26 on p. 2.

The third area addressed in this category involves custody and visitation provisions. The language on p. 2, ll. 28-31 of SB2076 states "the custody and visitation provisions of the order must have been issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state."

Here the Uniform Act is asking for *more* than the federal law requires for enforcement. The federal law only requires that a protection order comply with *domestic violence* laws dealing with custody and visitation, not the whole gamut of broader visitation and custody provisions, in order to be eligible for full faith and credit enforcement. Orders *not* covered by the federal law would be separate orders for custody and visitation, such as those issued in a divorce decree.

Clarifying custody and visitation provisions as they relate to full faith and credit enforcement is probably the most valuable new provision under VAWA II. There have been enormous difficulties with this gray area since the law was first passed. And so even as we welcome this clarification in VAWA II, we also urge clarity in our state law, which will be used more immediately for guidance to law enforcement. Therefore, we suggest eliminating the last sentence of p. 2 (ll. 28-31).

The fourth area also represents a major shift and a clarification of previous full faith and credit provisions. Child support may now be included as an enforceable provision if it is included in the protection order. North Dakota's standardized protection order forms, as distributed by the Supreme Court, included child support, and so we would suggest eliminating ll. 1,2 on p. 3: "A tribunal of this state may not enforce under this chapter an order or provision of an order with respect to support." With the passage of VAWA II, support can clearly be included.

The fifth and final proposed amendment has to do with immunity for law enforcement when acting in good faith. This provision was a major concern of ND law enforcement officers when our 1999 statute was passed, and it addresses a very valid concern of officers, especially when they are entering uncharted waters such as those proscribed as new responsibilities under this statute.

Our current ND statute says simply: "A law enforcement officer acting in good faith and without malice in enforcing a foreign protection order under this section is immune from civil or criminal liability for any action arising in connection with the enforcement of the protection order." The proposed Uniform Act goes a step further and adds

immunity for an "act or omission" (p. 5, l. 3 and l. 10). We request to keep our current statute's language.

The purpose of this immunity section is to encourage enforcement. There are already general immunity provisions for law enforcement officers who in good faith choose not to act in carrying out their duties. We feel that including the "omission" language in this statute is not only unnecessary but would be counterproductive to encouraging the enforcement of orders which officers are not used to seeing or enforcing.

Thank you for your forbearance in walking through these complicated and confusing provisions with me. Again, I trust our proposals are accepted in the spirit in which they are offered. It is admittedly a rather frightening prospect to anticipate that the statute which we have worked so hard to translate into workable protocols and effective training tools will be repealed and replaced. Our goal is to keep the best of both and continue to move forward.

Thank you.

*James J. Talbot*



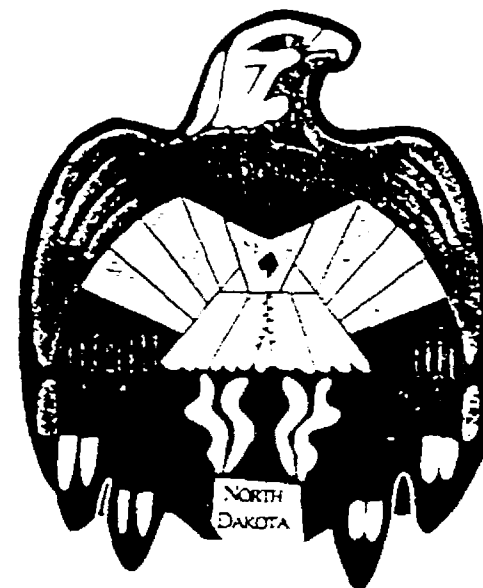
## North Dakota's Domestic Violence Centers

Abused Adult Resource Center	Bismarck	(701)-222-8370
Victim Assistance Program	Belcourt	(701)-477-5614
Women's Action & Resource Center	Beulah	(701)-873-2274
Family Crisis Center	Bottineau	(701)-228-2028
Safe Alternatives for Abused Families	Devils Lake	(888)-662-7378
DV & Rape Crisis Center	Dickinson	(888)-225-4506
Kedish House	Ellendale	(877)-349-4729
Rape & Abuse Crisis Center	Fargo	(701)-293-7273
Spirit Lake Victim Assistance Pro.	Fort Totten	(701)-763-5
Tender Hearts Against Family Viol	Fort Yates	(701)-854-3861 ext 228 (605)-823-4318
Tri-County Crisis Intervention, Inc.	Grafton	(701)-352-4242
Community Violence Intervention Ctr.	Grand Forks	(701)-746-0405
S.A.F.E. Shelter	Jamestown	(701)-251-2300
Abuse Resource Network	Lisbon	(701)-683-5061
Ft. Berthold Coalition Against DV	New Town	(701)-627-4171
Domestic Violence Crisis Center	Minot	(701)-852-2258
Domestic Violence Pro., NW, ND	Stanley	(701)-628-3233
Abused Persons Outreach Center	Valley City	(701)-845-0078
Three Rivers Crisis Center	Wahpeton	(701)-642-2115
McLean Family Resource Center	Washburn	(800)-651-8643
Family Crisis Shelter	Williston	(701)-572-0757

## Domestic Violence Protection Orders

*How To Get*

# *Full Faith and Credit Enforcement*



*A Guide for Domestic Violence Victims  
and Their Advocates*

North Dakota Council on Abused Women's Services/  
Coalition Against Sexual Assault in ND 1-888-255-6240  
(NDCAWS/CASAND) 418 East Rosser Ave. #320  
Bismarck, ND 58501-4046  
☎ 1-701-255-6240 Fax # 1-701-255-1904  
E-mail: [ndcaws@btigate.com](mailto:ndcaws@btigate.com)

## THE VIOLENCE AGAINST WOMEN ACT MAKES IT POSSIBLE TO GET YOUR ORDER OF PROTECTION ENFORCED IN OTHER STATES.

The Violence Against Women Act (VAWA) is a law that was passed by Congress in 1994. It says that all state and tribal courts should enforce orders of protection no matter which court or which state issued the order. North Dakota also passed a law, in 1999, which mirrors the federal law (NDCC 14-09.1-06). According to both federal and state law, all orders of protection are good anywhere in the country as long as they meet the following conditions:

- The court order was given by a judge after a person who alleged abuse by a family or household member filed a petition with the court asking for protection.
- The court that issued the order had jurisdiction over the people and case.
- The abuser had notice of the order and had a chance to go to court to tell his/her side of the story.
- In the case of ex parte temporary orders, (sometimes called emergency orders) the abuser will have a chance to go to court to tell his/her side of the story at a hearing which is scheduled at a later date.

**Each state must enforce out-of-state orders in the same way it enforces its own orders, and apply the same penalties that it applies to its own orders.** This pamphlet gives you general information about how to get your order of protection enforced in a state or tribal jurisdiction different from the one that gave it to you. It also gives you specific information about how to get your order enforced in North Dakota.

## GETTING ORDERS OF PROTECTION ENFORCED IN OTHER STATES OR IN TRIBAL JURISDICTIONS

**How Do I Get My Order of Protection Enforced By Another State or Tribe?** Court orders from other jurisdictions are often referred to as "foreign" orders since they come from another state or a tribal court. The federal law does not require you to take any special steps to get your protective order enforced in other jurisdictions, but many states and tribes have laws or regulations (rules) about how to get foreign protective orders enforced. These rules differ from state to state, and tribe to tribe, so it is important to find out the rules are before you try to get your order enforced.

In most places, having your order enforced is not difficult if you know the rules. Some states and tribes have rules that require them to notify your abuser if you register your order. North Dakota does not have this requirement. It is important to know the rules of the jurisdiction you will be living in or visiting, so you can make an informed decision about how to get your order enforced and whether or not you should register it.

### How Can I Find Out What The Rules Are?

1. Before you move to or visit another jurisdiction you can call a domestic violence program in the area you are in to help you find out what the rules are in the place to which you are moving. You also call a domestic violence program in the area to which you are moving and ask what the rules are and if they will help you get your order enforced.
2. If you do not know how to contact a domestic violence program in your area, call the National Domestic Violence Hot Line (1-800-799-7233) to get the number of a program in that state. Numbers for North Dakota domestic violence programs are listed at the end of this pamphlet. The ND Council on Abused Women's Services also has a national directory.
3. The clerk of court, the local state's attorney, or the United States Attorney's Office may also be able to help you.

**Do I Need To Get Someone To Help Me Get My Order Enforced In Another State?** Since this is a new law and there are still many people who do not know about it, you may want to get an attorney or a domestic violence advocate to help you. Most of the time, advocates know the laws and rules about getting orders enforced and they know the court system where they work. In some places, it would be difficult to get your out-of-state order enforced without an advocate. See the program listing in this brochure for ND advocates.

**What Things Will I Need To Get My Order Enforced In A New State?** In most places, you will need a certified copy of your order (a certified copy says it is a "true and correct" copy, is signed or initialed by the clerk of the court that gave you the order, and usually has some kind of court stamp). If your copy is not a certified

copy, call \_\_\_\_\_ to the court that gave you the order and ask for a certified copy. If you have moved and you did not get a certified copy, your court clerk, domestic violence advocate, or attorney should be able to help you get a certified copy from the court that gave you the order. If you are moving to a different state or into land under tribal jurisdiction, it may be helpful to take phone numbers for the court clerk in the state or tribal jurisdiction that issued the order and the number of the domestic violence program nearest your new home. Some states maintain computerized registries of protective orders. If the jurisdiction that gave you the protective order has a registry, try to get the phone number of the registry manager, or the number of the local police or sheriff's office that has your order on file.

### What If My Out-Of-State Order (Foreign Order) Is Only A Temporary Order And Is Good Only For A Short Time?

Temporary orders can be enforced by other states or tribes just like any other order, as long as your abuser has been served and your abuser will have the opportunity to have a court hearing set before your temporary order expires.

If you have a temporary order, and the abuser was served by the court, the police can enforce it as long as it is in effect. If the abuser was not served, and comes around you, law enforcement officers in North Dakota can serve it based on your copy. If your abuser does not obey it **after being served**, then the police can make an arrest.

The state or tribe to which you are going cannot extend the date of an order issued by another jurisdiction. If you need to have it extended, you will have to contact the court that issued the order and arrange to be at the hearing. If you do not, the order will expire. It may be helpful to have an attorney or a domestic violence advocate help you if you need to have the hearing date changed so that you can attend.

You may be eligible to get a new domestic violence order from North Dakota, but your abuser would receive notice that you are in the state and would have an opportunity to come to the court hearing. A North Dakota court clerk or an attorney can tell you if you're eligible. You will need to decide if it is safe for you to let your abuser know where you have moved.

Are There Any Problems With Getting My Order Enforced In Another State? There are sometimes problems getting new laws enforced until everyone knows about the law and knows what they are supposed to do to enforce it. Some of the things that might come up include the following:

1. State or Tribal rules. Some states or tribes have rules which can put some victims in danger, for example that the abuser be notified.
2. In some jurisdictions, judges, clerks and police officers may not be very familiar with this law. Although all states and tribes are required to enforce the federal law, you may need an advocate or an attorney to help you.
3. The law is not clear about how the Violence Against Women Act can be used to enforce the parts of protective orders that deal with child custody. There are other laws which govern child custody (the Uniform Child Custody Jurisdiction Act, and the Parental Kidnapping Act). If your order gives you custody of your children and you think that your abuser may try to take your children, it will be very important for you to contact an attorney or advocate to make sure that your order meets the requirements of these laws.
4. If your copy is not a certified copy, the court clerk will try to get a certified copy of the order from the court that gave it to you. The court clerk will let you know if they are having any difficulty getting a certified copy of the order so that you will know in advance if there is a problem. If you have any trusted friends or family, or an attorney in the state where the order was issued, they may be able to help you get a certified copy.

### What If The Court That Issued My Order Contacts North Dakota And Says That My Order Has Been Changed Or Is Not Good?

If the North Dakota court is notified that your out-of-state order has been changed in some way, the court in North Dakota will notify you. If your order has been changed without your knowledge, you will have to go back to the state that gave the order to do something about it. You may need an attorney or a domestic violence advocate to help you. If your order has been changed, you can not have it enforced by the police in North Dakota. The North Dakota court clerk will be able to tell you if you can get a North Dakota protection order.

# GETTING OUT-OF-STATE (FOREIGN) PROTECTIVE ORDERS ENFORCED IN NORTH DAKOTA

## How Do I Get My Out-Of-State (Foreign Order) Enforced in North Dakota?

It is very important to make sure that you always have a copy of the order with you. Court orders are enforced by law enforcement (the police department or sheriff's office). Once a law enforcement officer knows about an order the order is supposed to be enforced just as if it were issued in North Dakota. There are two methods to give law enforcement notice of your court order so they can enforce it:

1. You can call any police officer or sheriff if your abuser disobeys the order. When the police get there, you should show them a copy of your order. **Note: According to ND law, it is a Class A misdemeanor to give law enforcement a protection order you know to be false or invalid.**
2. You can register your order with the district court clerk's office in the county or trial jurisdiction in which you live.

## What Do I Have To Do To Get My Order Registered?

You must take your copy of the order to the district court clerk and say that you would like to get it registered in North Dakota. You will be asked to sign a sworn statement (affidavit) that the copy you have is up to date and a correct copy of the order. It also says that you will notify the court if you learn of any future changes to the order made by the state that gave you the order.

**If you have a certified copy**, (a copy that says it is a "true and correct" copy, is signed or initialed by the clerk of the court that gave the order, and usually has some kind of a court stamp), that copy will be delivered to the court and to the local sheriff's department. The sheriff's department will then enter the order into the Protection Order Registry, which is part of North Dakota's current warrant information (CWIS) and will eventually be tied into the National Registry of Protection Orders. Usually, a domestic violence advocate delivers these copies with or for you.

=====  
Our thanks to the National Domestic Violence Association for sharing their work on a similar brochure



## IMPORTANT PHONE NUMBERS

### Court Clerk

Enforcing State or Tribe \_\_\_\_\_

Issuing State or Tribe \_\_\_\_\_

### Domestic Violence Program/Hotline

Enforcing State \_\_\_\_\_

Issuing State \_\_\_\_\_

### State Law Enforcement Agency (*Highway Patrol, Bureau of Criminal Investigation*)

Enforcing State \_\_\_\_\_

Issuing State \_\_\_\_\_

### Local Police (*City Police or Sheriff, BIA or Tribal Police*)

Enforcing State or Tribe \_\_\_\_\_

Issuing State or Tribe \_\_\_\_\_

### Attorney

Enforcing State \_\_\_\_\_

Issuing State \_\_\_\_\_

- #1) North Dakota Statewide Mental Health Association Helpline  
1-800-472-2911 (*in-state only for referral to ND d.v. programs*)
- #2) North Dakota Council on Abused Women's Services/Coalition  
Against Sexual Assault in ND 701-255-6240 1-888-255-6240
- #3) National Domestic Violence Hotline (*24 hours*)  
1-800-799-SAFE (7233) 1-800-787-3224 (TDD)
- United States Attorney's Office . . (Fargo) . . 701-297-7400  
United States Attorney's Office . (Bismarck) 701-530-2420

**NOTE:** The U.S. Attorney's office will determine whether or not a violation of a protection order can be prosecuted under VAWA.

# PROTECTING VICTIMS OF DOMESTIC VIOLENCE



Office of the Attorney General  
Washington, D. C. 20530

"Through its full faith and credit provision, the Violence Against Women Act is designed to ensure that valid protection orders are enforced in each and every jurisdiction in America. The statute affords important and often lifesaving protection for victims of domestic violence who cross state or tribal lines - whether to go to work, visit relatives, or seek safe haven from abuse. Law enforcement officers play a crucial role in ensuring that protection orders are enforced so that a victim is safe no matter where in the country she goes. I hope that you will find this booklet helpful in your efforts to stop domestic violence and save lives."

  
Janet Reno  
Attorney General of the United States



International Association of Chiefs of Police

To America's Law Enforcement Officers:

Protecting victims of domestic violence is a critical part of our job. The actions you take in these situations can clear the way for lives. Orders of protection are issued to ensure the safety of victims of domestic violence. We need to enforce these orders to the best of our abilities. The "full faith and credit" component of the 1994 Violence Against Women Act requires law enforcement officers to enforce protection orders across the 50 states, tribes and territories. *Once an order of protection is issued by a jurisdiction, it is enforceable in any other jurisdiction in the United States.* Both the Attorney General and the IACP are deeply concerned about domestic violence. This booklet is an excellent primer on orders of protection and full faith and credit. I urge you to read it and act on it.

  
Robert D. Mott  
IACP President

**A LAW  
ENFORCEMENT  
OFFICER'S GUIDE  
TO ENFORCING  
ORDERS OF  
PROTECTION  
NATIONWIDE**

This project was supported by a Cooperative Agreement awarded by the Violence Against Women Grants Office, Office of Justice Programs, U.S. Department of Justice, to the International Association of Chiefs of Police.



## WHAT IS FULL FAITH AND CREDIT?

In 1994, Congress enacted the Violence Against Women Act (VAWA) directing jurisdictions\* to give full faith and credit to valid orders of protection issued by other jurisdictions. 18 U.S.C. § 2265.

### WHAT DOES THIS MEAN FOR VICTIMS?

Abused persons who are granted orders of protection can now call upon law enforcement to protect them and to take all appropriate action against abusers nationwide.

### WHAT DOES THIS MEAN FOR ABUSERS?

The abuser is bound by the terms and conditions of the order of protection and may be arrested\*\* and charged with violating the order and committing other substantive crimes wherever the abuser violates a v. order. It does not make any difference where the order was granted. The abuser must be arrested for a violation of an order of protection if the law of the jurisdiction where the violation occurred requires an arrest.

Simply stated, full faith and credit requires that:

Valid orders of protection must be enforced to protect victims of domestic violence wherever a violation of an order occurs, regardless of where the order was issued.

### WHAT DOES THIS MEAN FOR LAW ENFORCEMENT?

If an order of protection is valid in the issuing jurisdiction, it must be enforced in every other jurisdiction. Some jurisdictions grant orders:

- ✓ to victims who might not be eligible for orders in the enforcing jurisdiction
- ✓ for periods of time longer than authorized in the enforcing jurisdiction
- ✓ containing directives against abusers that might not be available in the enforcing jurisdiction

A responding officer **MUST ENFORCE** the terms and conditions of the order as written.

Officers are not required to know the laws of the issuing jurisdiction in order to enforce orders of protection. Officers in the enforcing jurisdiction must comply with all laws, policies, and procedures of their own jurisdiction concerning violation of orders of protection, such as mandatory arrest and victim notification, if applicable.

\* For purposes of brevity, the term "jurisdiction" will be used to refer to a state, the District of Columbia, a commonwealth, territory,<sup>3</sup> possession of the United States, and to Indian tribes.

\*\* For tribal law enforcement technical assistance regarding arrest, contact Sacred Circle (see page 11).

## WHY IS FULL FAITH AND CREDIT IMPORTANT?



When victims of domestic violence leave, they and their children are at an increased risk of violence. Abusers who cross jurisdictions in pursuit of victims may be engaged in stalking, which is a significant risk indicator of life-threatening violence.

### LIABILITY FOR FAILURE TO ENFORCE ORDERS OF PROTECTION

The mandate to give full faith and credit to valid orders of protection nationwide confronts law enforcement with new challenges, including the possibility of liability for failure to enforce orders of protection from other jurisdictions. Many jurisdictions have laws that provide officers with statutory immunity from liability when an officer takes reasonable action to protect a victim in a domestic violence case.

*Failure to enforce a valid order of protection based on the fact that it was issued in another jurisdiction may leave officers and departments vulnerable to liability.*

### Reducing the Risk of Liability:

- ✓ Understand the laws of the enforcing jurisdiction related to liability
- ✓ Respond in a timely fashion
- ✓ Investigate thoroughly
- ✓ Follow arrest laws of enforcing jurisdiction
- ✓ Offer assistance and referral to victim
- ✓ Complete detailed incident reports
- ✓ Charge appropriately
- ✓ Follow up for victim protection
  - Train all law enforcement personnel
- ✓ Supervise carefully to assure victim safety
- ✓ Confiscate proscribed weapons

## Full Faith and Credit for Orders of Protection

### Issuing jurisdiction determines:

- Whether an order of protection should be issued
- Who is to be protected
- Terms and conditions of the order
- Duration of the order

### Enforcing jurisdiction determines:

- How the order is enforced
- Arrest authority of responding officer
- Detention and notification procedures
- Crimes charged for violation of an order

# WHAT IS AN ORDER OF PROTECTION?

Under VAWA, a protection order is defined as: any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with, or physical proximity to, another person.

The Federal full faith and credit provision of VAWA applies to both criminal and civil orders of protection. Orders may differ in form, content, length, layout and names (i.e., stay away, restraining, criminal, and emergency or temporary protection order)

In some jurisdictions, a certification form is affixed to the order of protection verifying that it is a valid order of the court. However, under Federal law certification form is not required for the order of protection to be enforced. Nor is there any requirement that the order or the signature of the issuing authority be original or that there be a raised seal or stamp of the court on the document. Additionally, there is no requirement in the Federal law that a victim must register the order of protection in the enforcing jurisdiction before that jurisdiction enforces the order.

## Basic Elements of a Valid Order of Protection

Any order of protection should be presumed valid if all of the following are found:

- ✓ The order gives the names of the parties
- ✓ The order contains the date the order was issued, which is prior to the date when enforcement is sought
- ✓ If the order has an expiration date, the date of expiration has not occurred
- ✓ The order specifies terms and conditions against the abuser
- ✓ The order contains the name of the issuing court
- ✓ The order is signed by or on behalf of a judicial officer



## Verification can be accomplished by any one of the following methods:

- Confirm the elements of an order in the NCIC Protection Order File
- Review the elements of an order in state or local registries of protection orders in the issuing jurisdiction
- Confirm the elements by communication with the issuing court
- Review the elements of an order if previously filed with designated authorities in the enforcing jurisdiction
- Draw upon personal knowledge of the officer

## DETERMINING THE TERMS AND CONDITIONS OF AN ORDER OF PROTECTION

After providing for victim and officer safety, it is essential that the officer read the order in its entirety. An order may state something in one paragraph and specify exceptions in another. For example, an order may state that the abuser is to have "no contact" with a victim in one paragraph, and then in another state that contact may occur to arrange for visitation with the children. In this case, if the abuser contacted the victim for any reason other than to arrange for visitation, the order was violated.

## VERIFYING THE TERMS AND CONDITIONS OF AN ORDER OF PROTECTION

Although verification is not required under Federal law, it may be required by the enforcing jurisdiction under certain circumstances (e.g. the victim does not have a copy of the order).

Petitioner: \_\_\_\_\_ (Name),  
 vs. Respondent: \_\_\_\_\_ (Name),  
 IN THE \_\_\_\_\_ COURT OF  
 \_\_\_\_\_ (County/Judicial District)  
 \_\_\_\_\_ (State/Territory)  
 CIVIL ACTION - LAW  
 PROTECTION/RESTRAINING  
 ORDER  
 Docket No. \_\_\_\_\_ 199\_\_

**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: OR  
 a civil protection/restraining order  
 a criminal protection/restraining 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 opportunity to be heard sufficient to protect the defendant's right to due process before this order was issued; or if the order was issued ex-parte, the court ordered that the defendant be given reasonable notice and opportunity to be heard within the time required by the law of this jurisdiction; and in any event a reasonable time after the order was issued, sufficient \_\_\_\_\_ (to the defendant's \_\_\_\_\_)

\_\_\_\_\_ otherwise issued in accord with the requirements of the Violence Against Women Act Title IV, Subtitle F of the Enforcement Act of 1994, 18 U.S.C. 2265

\_\_\_\_\_ the requirements of \_\_\_\_\_  
 \_\_\_\_\_ with the sen- \_\_\_\_\_  
 \_\_\_\_\_ Act, P.L. \_\_\_\_\_  
 \_\_\_\_\_ and other \_\_\_\_\_

\_\_\_\_\_ Child Custody  
 \_\_\_\_\_ the Federal Parental  
 \_\_\_\_\_ no. 96-611.

**WHAT IS AN ORDER OF PROTECTION?** *(continued)*



**EVALUATING THE ENFORCEABILITY OF AN ORDER OF PROTECTION**

An order of protection issued in another jurisdiction is enforceable when:

- ✓ the order appears to be valid (see page 5)
- ✓ there is probable cause to believe that a violation of the order occurred in the enforcing jurisdiction.

Where enforcement requirements have not been met, the officer in the enforcing jurisdiction may not be able to arrest specifically for a violation of the order. However, other potentially chargeable offenses may have occurred. The officer should make a warrantless arrest or seek an arrest warrant related to the criminal conduct based on the enforcing jurisdiction's law.

**Mutual Orders of Protection**

Sometimes an order of protection will contain a mutual "no contact" provision or it will direct both parties not to abuse each other. The full faith and credit section of VAWA requires special safeguards for inter-jurisdictional enforcement of this type of order. Basically it states that an order should be enforced against the respondent (person against whom the order was issued) and not the petitioner unless the issuing court made a specific finding that each party had abused the other. If such findings were made, the order may be enforced against both parties.

**WHAT ENFORCEMENT ACTION SHOULD BE TAKEN?**

**IMMEDIATE ACTION**

- ✓ Ensure the safety of all involved
- ✓ Seek medical attention, if necessary
- ✓ Safeguard the victim from further abuse
- ✓ Secure and protect the crime scene
- ✓ Seek voluntary surrender of firearms for safekeeping purposes
- ✓ Seize firearms subject to State, territorial, local, or tribal prohibitions
- ✓ Identify whether an order of protection has been violated
- ✓ Evaluate the validity and enforceability of the order
- ✓ Arrest for violation of the order where required by the enforcing jurisdiction
- ✓ Arrest for any other criminal offenses
- ✓ Seek an arrest warrant, when required, related to the criminal conduct if the abuser is not at the scene
- ✓ Attempt to locate and arrest the abuser

**FIREARMS**

Federal law prohibits an abuser subject to a qualifying order of protection from possessing firearms and ammunition, 18 U.S.C. § 922(g)(8). When an officer determines that a valid order of protection has been issued against an abuser, the officer should enforce the firearms prohibition. Seizing weapons subject to this prohibition, if allowed under state law, is essential to victim and community safety. Officers also should be knowledgeable about their own jurisdiction's law authorizing or precluding possession or transfer of weapons to third parties by a person subject to an order of protection.

***"Providing the victim with referral information at the scene of a domestic incident can be the most important action an officer can take to stop domestic violence"***

*Sobby Moon,  
IACP President*



## SUMMARY OF FEDERAL CRIMES OF DOMESTIC VIOLENCE

Officers must be familiar with Federal laws that pertain to domestic violence in order to assess whether Federal crimes have been committed.

Legislation is being considered that may change some of the laws. Contact the U.S.



Attorney in your jurisdiction for an update. For the following Federal crimes, the law defines State to include: a state of the United States, the District of Columbia, a commonwealth, territory, or possession of the United States.

### INTERSTATE TRAVEL TO COMMIT DOMESTIC VIOLENCE—

#### 18 U.S.C. § 2261

It is a Federal crime for a person to travel interstate, or leave or enter Indian country with the intent to injure, harass or intimidate an intimate partner when in the course of or as a result of the travel the abuser commits a violent crime that causes bodily injury. The abuser must intend to commit the domestic violence at the time of travel. The definition of partner is broad and basically includes a person with whom the abuser has cohabited in an intimate relationship (including a current or former spouse) or a person who has a child in common with the abuser.

It is also a Federal crime to cause an intimate partner to cross state lines, or leave or enter Indian country by force, coercion, duress, or fraud if the abuser intentionally inflicts bodily injury to the partner during or as a result of the conduct.

### INTERSTATE STALKING—18 U.S.C. § 2261A

It is a Federal crime to cross a state line with the intent to injure or harass any person if, during the course of or as a result of the travel, the traveler places the person or a member of the person's immediate family in reasonable fear of death or serious bodily injury. The definition of immediate family is broad and includes a spouse, parent, child, sibling and all household members related to the primary victim by blood or marriage.

### INTERSTATE VIOLATION OF AN ORDER OF PROTECTION—

#### 18 U.S.C. § 2262

This law basically prohibits interstate travel or leaving or entering Indian country with intent to violate a valid protection order that forbids credible threats of violence, repeated harassment, or bodily injury. The abuser must intend to violate the order at the time of travel and a violation of the order must occur.

It is also a Federal crime to cause an intimate partner to cross state lines, or leave or enter Indian country by force, coercion, duress, or fraud, if during or as a result of the conduct, the abuser intentionally inflicts bodily injury to the victim in violation of a valid protection order.

## HELPFUL INTERVENTIONS

### REFERRAL ACTIONS

- ✓ Address transportation and housing needs of victim by making appropriate referrals to community services
- ✓ Refer victim to issuing jurisdiction for enforcement of economic provisions within order of protection
- Refer victim to the appropriate court or victim advocacy agency to obtain assistance in enforcing the economic provisions of an order, such as child support enforcement



### ASSESSING LETHALITY

Factors to consider in determining serious injury lethality potential:

- ✓ Threats of homicide/suicide
- ✓ History of domestic violence and violent criminal conduct
- ✓ Stalking
- ✓ Depression or other mental illness
- ✓ Obsessive attachment to victim
- ✓ Separation of parties
- ✓ Drug or alcohol involvement
- ✓ Possession or access to weapons
- ✓ Abuse of pets
- ✓ Destruction of victim's property
- ✓ Access to victim and victim's family and other supporters

These factors can be helpful in many cases, but are not guaranteed predictors of future violence.

### Safety Strategies

- Notify victim of legal rights within enforcing jurisdiction
- Assess lethality
- Conduct safety planning with the victim
- Provide telephone numbers for local shelters and hotlines
- Follow up by law enforcement and victim advocacy programs

## QUESTIONS FREQUENTLY ASKED ABOUT FULL FAITH AND CREDIT

### WHAT IF THE VICTIM DOES NOT HAVE A COPY OF THE ORDER OF PROTECTION?

- Seek to verify the existence of an order (see page 5)
- Verify victim's claim of an order of protection through reliable and credible information
- Confirm through abuser's statement that an order of protection exists

- Determine whether there is probable cause to believe that the abuser has committed a criminal offense
- Arrest abuser if appropriate under enforcing jurisdiction's law and notify issuing authority of arrest
- Refer victim to appropriate court or advocacy agency

### WHAT IF THE ABUSER CLAIMS NO NOTICE OR SERVICE OF AN ORDER OF PROTECTION?

- Verify the existence of an order (see page 5)
- Give notice to abuser of terms of the order of protection and provide abuser with a copy
- Explain consequences of future violations to the abuser
- Notify issuing authority that the abuser received notice and/or a copy of the order of protection
- Notify issuing authority of arrest, if applicable

### WHAT IF THE ABUSER HAS VIOLATED THE ORDER OF PROTECTION AND THEN FLED THE SCENE?

- Determine if abuser's actions warrant arrest
- Follow departmental procedure for dealing with a criminal suspect who has fled the scene
- Conduct safety planning and refer victim to appropriate court or advocacy agency

### WHAT IF THE ORDER OF PROTECTION GIVES RELIEF NOT AUTHORIZED IN OFFICER'S JURISDICTION?

- Enforce terms and conditions of the order of protection as written (see page 5)
- Enforce for duration specified in the order of protection
- Enforce on behalf of victim(s) named in the order of protection

## TECHNICAL ASSISTANCE ON FULL FAITH AND CREDIT IMPLEMENTATION

Technical assistance is available to law enforcement and victims of domestic violence to answer specific questions and to facilitate effective enforcement.

### ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE

- National Domestic Violence Hotline (800) 799-SAFE, TTY (800) 787-3224 (24 hours/day, for referral to state and local programs)

### TECHNICAL ASSISTANCE ON FULL FAITH AND CREDIT

- International Association of Chiefs of Police (800) The-IACP
- Full Faith and Credit Project (800) 256-5883
- Battered Women's Justice Project (800) 903-0111, ext. 2

### EXPERTISE ON TRIBAL LEGAL ISSUES

- Sacred Circle (877) 733-7623
- Mending the Sacred Hoop (888) 305-1650
- American Indian Law Center (505) 277-5462
- Northern Plains Tribal Judicial Institute (701) 777-6176

*"Law enforcement officers play a crucial role in ensuring that protection orders are enforced so that a victim is safe no matter where in the country she goes."*

Janet Reno  
Attorney General  
of the United States

*This pamphlet, produced by the International Association of Chiefs of Police, may be freely reproduced. It may also be accessed through our website ([www.theacp.org](http://www.theacp.org)).*

#### **Immediate Action**

If the named respondent committed an offense under the criminal laws in the officer's jurisdiction and/or violated the court order, the officer should:

- ✓ Arrest respondent pursuant to the enforcing jurisdiction's law and departmental policy
- ✓ Initiate criminal complaint against respondent for the crime(s) committed and for violation of the order

#### **Referral Actions and Safety Strategies**

- ✓ Refer victims to the appropriate domestic violence program and court to seek relief
- ✓ Refer victims to the National Domestic Violence Hotline: (800) 799-SAFE, TTY: (800) 787-3224
- ✓ Assist victims in strategically planning for their future
- ✓ Notify victims of their legal rights in the enforcing jurisdiction

#### **Firearms Seizure/Removal**

If a qualifying order of protection has been issued, the officer should take possession of all weapons in the abuser's possession through voluntary means or through application of local, State, tribal, territorial and Federal laws pursuant to departmental policy.

## **SUMMARY OF FEDERAL CRIMES**

If an officer concludes that Federal law was violated, the officer or supervisor in accordance with departmental procedure should contact a designated prosecutor for possible prosecution by the U.S. Attorney's office.

#### **Interstate Domestic Violence**

- ✓ Defendant crossed State line or entered or left Indian country with intent to injure, harass, or intimidate that person's spouse or intimate partner, and defendant, in the course of or as a result of such travel, intentionally committed a crime of violence and caused bodily injury to such spouse or intimate partner
- ✓ Defendant caused spouse or intimate partner to cross State line or to enter or leave Indian country by force, coercion, duress or fraud in order to commit the above offenses

*Continued on reverse side*

### Interstate Violation of Order of Protection

- ✓ Defendant crossed State line or entered or left Indian country with intent to violate order of protection and then violated the order of protection by making a threat or by committing harassment or bodily injury.
- ✓ Defendant caused victim to cross State line or to enter or leave Indian country by force, coercion, duress, or fraud and, in the course of, or as result of such conduct, intentionally injured the victim in violation of an order of protection.

### Interstate Stalking

- ✓ Defendant crossed State line with the intent to injure or harass another person and caused that person to fear death or serious bodily injury to himself or herself or to immediate family or related household members.

\* "State" includes a state of the United States, the District of Columbia, a commonwealth, territory, or possession of the United States.



## ENFORCING ORDERS OF PROTECTION

Federal law requires that all valid orders of protection granted by a court of any jurisdiction be recognized and enforced as if they were issued by a court where the violation occurred.

### Bonding Officer's Procedures

Bonding officer must enforce the terms and conditions of the order as written by the issuing jurisdiction.

The order of protection is presumed valid if it has the correct names of the parties, has not expired, and is signed by an issuing authority. It should be enforced pursuant to departmental policy and the laws of the enforcing jurisdiction.

Prepared by North Dakota State's Attorneys Association  
and North Dakota Peace Officers Association

**PROPOSED AMENDMENTS TO SB 2076**

Page 5, line 10, replace "if the" with "or any" and replace "is" with "if"

Renumber accordingly

**SUGGESTED AMENDMENTS TO SB2076-RELATING TO THE UNIFORM  
INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION  
ORDERS ACT**

Page 2, lines 11-14, delete and insert "state means a state of the United States, Indian tribe, the District of Columbia, or a commonwealth, territory, or possession of the United States."

This language affords equal footing to tribes rather than including them as an afterthought.

Page 4, line 15, insert:

"5. Any person who intentionally provides a law enforcement officer with a copy of a foreign domestic violence protection order known by that person to be false or invalid, or who denies having been served with a protection order when that person has been served with such an order, is guilty of a class A misdemeanor."

Page 4, line 24, insert after "issuing state":

"If a foreign order is filed under this subsection, the clerk of district court shall transmit a copy of the order to the appropriate local law enforcement agency as provided under section 14-07.1-03."

## SUGGESTED AMENDMENTS-CONTINUED

Page 1, line 21, insert "or Indian tribes" after "state".

Page 2, line 22, insert "or tribe" after "issuing state" and after "state".

Page 3, line 10, delete "and afforded" and insert "of an".

Page 3, line 11, insert after "within" "the time required by the law of the issuing state, or in any event within".

Page 3, line 22, delete "in favor of the respondent" and insert after "findings" "that each party was entitled to such an order".

Page 3, lines 30-31, delete "For the purposes of this section, the protection order may be inscribed on a tangible medium or may" and insert " a law enforcement officer may rely on any foreign domestic violence protection order that has been provided to the officer in any form."

Page 4, lines 1, 2, delete "have been stored in any electronic or other medium if it is retrievable in perceivable form" and insert "A law enforcement officer may rely on the statement of the person protected by the order that the order is in effect and that the respondent was personally served with a copy of the order".

Page 4, line 6, insert after "exists" "such as contacting law enforcement in the issuing jurisdiction, the issuing tribunal, or by checking the National Crime Information Center's (NCIC) protection order file".

Page 5, line 5, insert after "order" "or provision of a certified copy of the registered order."

## SUGGESTED AMENDMENTS-CONTINUED

Page 2, lines 5-6, delete "under the domestic violence or family violence laws of the issuing order".

Page 2, lines 24-26, delete "A tribunal of this state may not enforce an order issued by a tribunal that does not recognize the standing of a protected individual to seek enforcement of the order".

Page 2, lines 28-31, delete "The custody and visitation provisions of the order must have been issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state".

Page 3, lines 1,2, delete "a tribunal of this state may not enforce under this chapter an order or provision of an order with respect to support".

Page 5, line 3, after "act" delete "or omission".

Page 5, line 10, after "act" delete "or omission".



**14-07.1-02.2. Foreign domestic violence protection orders - Full faith and credit recognition and enforcement.** Subject to subsection 1, a domestic violence protection order issued by a court of competent jurisdiction of another state, Indian tribe, the District of Columbia, or a commonwealth, territory, or possession of the United States must be accorded full faith and credit by the courts of this state and enforced as if the order was issued by a court in this state.

1. A foreign domestic violence protection order is enforceable in this state if all of the following are satisfied:
  - a. The respondent received notice of the order in compliance with requirements of the issuing jurisdiction;
  - b. The order is in effect in the issuing jurisdiction;
  - c. The issuing court had jurisdiction over the parties and the subject matter;
  - d. The respondent was afforded reasonable notice and opportunity to be heard sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must have been provided within the time required by the law of the issuing jurisdiction, and in any event within a reasonable time after the order was issued, sufficient to protect the respondent's due process rights. Failure to provide reasonable notice and opportunity to be heard is an affirmative defense to any prosecution for violation of the foreign protection order or any process filed seeking enforcement of the order; and
  - e. If the order also provides protection for the respondent, a petition, application, or other written pleading was filed with the issuing court seeking such an order and the issuing court made specific findings that the respondent was entitled to the order.
2. A person entitled to protection under a foreign domestic violence protection order may file the foreign order in the office of any clerk of district court in this state. The person filing the order shall also file with the clerk of district court an affidavit certifying the validity and status of the foreign order and attesting to the person's belief that the order has not been amended, rescinded, or superseded by any orders from a court of competent jurisdiction. If a foreign order is filed under this subsection, the clerk of district court shall transmit a copy of the order to the appropriate local law enforcement agency as provided under section 14-07.1-03. Filing of a foreign order under this subsection is not a prerequisite to the order's enforcement in this state. A fee for filing the foreign order may not be assessed.
3. A law enforcement officer may rely upon any foreign domestic violence protection order that has been provided to the officer by any source. The officer may make arrests for violation of the order in the same manner as for violation of a protection order issued in this state. A law enforcement officer may rely on the statement of the person protected by the order that the order is in effect and that the respondent was personally served with a copy of the order. A law enforcement officer acting in good faith and without malice in enforcing a foreign protection order under this section is immune from civil or criminal liability for any action arising in connection with the enforcement of the protection order.
4. Any person who intentionally provides a law enforcement officer with a copy of a foreign domestic violence protection order known by that person to be false or invalid, or who denies having been served with a protection order when that person has been served with such an order, is guilty of a class A misdemeanor.

**14-07.1-03. Temporary protection order - Copy to law enforcement agency.**

**Full Faith And Credit Provisions of  
The Violence Against Women Act  
18 U.S.C. § § 2265 · 2266 (2000)**

**§ 2265 Full Faith and Credit Given to Protection Orders**

(a) **FULL FAITH AND CREDIT**, -Any protection order issued that is consistent with subsection (b) of this section by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the court of another State or Indian tribe (the enforcing State or Indian tribe) and enforced as if it were the order of the enforcing State or tribe.

(b) **PROTECTION ORDER**, - A protection order issued by a State or tribal court is consistent with this subsection if -

(1) such court has jurisdiction over the parties and matter under the law of such State or Indian tribe; and

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State or tribal law, or, if not specified, within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.

(c) **CROSS OR COUNTER PETITION**, - A protection order issued by a State or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if

(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or

(2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.

(d) **NOTIFICATION AND REGISTRATION**.-

(1) **NOTIFICATION**, --A State or Indian tribe according full faith and credit to an order by a court of another State or Indian tribe shall not notify or require notification of the party against whom a protection order has been issued that the protection order has been registered or filed in that enforcing State or tribal jurisdiction unless requested to do so by the party protected under such order.

(2) **NO PRIOR REGISTRATION OR FILING AS PREREQUISITE FOR ENFORCEMENT**, --Any protection order that is otherwise consistent with this section shall be accorded full faith and credit, notwithstanding failure to comply with any requirement that the order be registered or filed in the enforcing State or tribal jurisdiction.

(e) **TRIBAL COURT JURISDICTION**.—For purposes of this section, a tribal court shall have full civil jurisdiction to enforce protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from Indian lands, and other appropriate mechanism, in matters arising within the authority of the tribe.

**§ 2266 Definitions**

(5) **PROTECTION ORDER**.—The term "protection order" includes any injunction or other order issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person, including any temporary or final order issued by a civil and criminal court (other than a support or child custody order issued pursuant to State divorce and child custody laws, except to the extent that such an order is entitled to full faith and credit under other Federal law) whether obtained by filing an independent action or as a pendente lite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection.

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