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DESCRIPTION

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Operator's Signature

*10/2/03*  
Date

2003 HOUSE JUDICIARY

HB 1072

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10/2/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1072

House Judiciary Committee

☐ Conference Committee

Hearing Date 1-15-03

Tape Number	Side A	Side B	Meter #
1		xx	40-end (tape broken)
2	xx		0-19
Committee Clerk Signature			

**Minutes:** 13 members present.

**Chairman DeKrey:** We will now hear testimony on HB 1072.

**Judge Gail Hagerty:** (see attached testimony) In support of the bill.

**Rep. Delmore:** Does it strengthen the orders?

**Judge Hagerty:** It is definitely strengthen the order by enforcing foreign orders.

**Chairman DeKrey:** Thank you for your testimony. Any other testimony in support of HB 1072.

**John Olson, Peace Officers Association:** In support of HB 1072.

**James Vukelic, Chief Prosecutor - Standing Rock Sioux Tribe:** In support of HB 1072 (see attached testimony).

**Rep. Delmore:** You say in your testimony about the due process, the procedures that Standing Rock follow, would all ND reservations be in the same place on this law.

Page 2  
House Judiciary Committee  
Bill/Resolution Number HB 1072  
Hearing Date 1-15-03

**Mr. Vukelic:** I am only familiar with the two tribe court systems that I deal with, Standing Rock and Three Affiliated Tribes. I am familiar with the procedures they have to protection orders and they closely parallel state law. In terms of due process, you are entitled to a hearing and both of those courts do provide that to anybody who would be called the respondent at a protection order hearing. A respondent in a state court is entitled to a hearing before the court will issue a permanent order, meaning up to 1 or 2 years. That same provision is applicable in the two tribal courts with which I am familiar. I can't speak for Spirit Lake or the Turtle Mountain Tribe.

**Rep. Klemin:** To further respond to Rep. Delmore, the term state is defined in this act to include an Indian Tribe that has jurisdiction to issue protection orders, and to my knowledge, all of the tribes in ND are considered sovereign nations and have jurisdiction.

**Mr. Vukelic:** I agree with you.

**Chairman DeKrey:** Thank you for appearing before us. Anyone wishing to testify in support of HB 1072? Anyone wish to testify in opposition to HB 1072?

Bonnie Palachek, ND Council on Abused Women's Services: Opposed to HB 1072 (see attached testimony).

Rep. Klemin: Who has to be trained.

Ms. Palachek: The people working at the front lines, such as law enforcement officers.

Rep. Klemin: We heard that Mr. Olson, on behalf of the ND Peace Officers, support this, do you have something from the peace officers that say they don't because they would have to have training and they don't know where the money is going to come from, have you talked to them about that.

Ms. Palachek: No, I didn't anticipate that would be an issue.

*Yalosta Rickford*  
Operator's Signature

*10/2/03*  
Date

Page 3

House Judiciary Committee

Bill/Resolution Number HB 1072

Hearing Date 1-15-03

Rep. Kretschmar: Judge Hagerty stated that the Uniform Act that we are considering here, has been approved and introduced in South Dakota. You state that SD has a bill pending, is that the same bill or a different bill?

Ms. Palachek: I would imagine it is the same bill, I know the state has been working for a long time. Every state needs some kind of legislation that is consistent on some level. So I would assume, that even though I haven't seen the bill draft, that I recently talked with the SD Coalition and they didn't send me a copy of the bill, but I have gone through it step-by-step with them.

Chairman DeKrey: Thank you for appearing before our committee. Anyone else wishing to testify in opposition to HB 1072. Judge Hagerty, do you have any further comments that you would like to make on this bill.

Judge Hagerty: I would like to make some written responses. I will get that to you.

Chairman DeKrey: Thank you. We are adjourned.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1072

House Judiciary Committee

☐ Conference Committee

Hearing Date 2-17-03

Tape Number	Side A	Side B	Meter #
1	xx		43.7-end
1		XX	0-10
Committee Clerk Signature <i>M. Penrose</i>			

**Minutes:** 13 members present.

**Chairman DeKrey:** We will reopen the hearing on HB 1072.

**Judge Gall Hagerty:** The current ND law is not better than the proposed changes in HB 1072.

ND law is good, but could be better, need uniform laws. This will give the courts better direction in how to handle mutual protection orders, etc. There are a couple of amendments that need to be made that I submitted in January. I think there should be a provision that says "If a foreign order is registered, the clerk of district court shall transmit a copy of the order to the appropriate local law enforcement agency" and the penalty provision needs to be amended so that the violation would be a class C felony. The peace officers support this legislation, the Bar Association supports the legislation. It is an area where we need uniform law.

**Rep. Delmore:** How many states have adopted this?

**Judge Hagerty:** It's been introduced in several states, I think 2 or 3 have adopted it, I think it is under consideration. It has been going through a lengthy process. The process involves drafting,

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Page 2  
House Judiciary Committee  
Bill/Resolution Number HB 1072  
Hearing Date 2-17-03

having it read at two annual meetings of the Uniform Law Commission. Then it was submitted to the ABA and last week the ABA endorsed it. It is something where we might be one of the earlier states to adopt it, but I think it will have widespread adoption.

**Rep. Delmore:** We don't really know how effectively this has been used then.

**Judge Hagerty:** Right, but we do know that it answers a lot of questions that our current law doesn't. We do know that there are various areas where a judge wouldn't have any direction. This was drafted with the Justice Institute and with the Justice Department, they have been involved in the drafting process as it has been going on.

**Rep. Delmore:** Why is the definition in here better than the suggested amendment.

**Judge Hagerty:** Since it was just handed to me, I don't know. The definition has been worked on and debated over a period of years, and I believe that the definition in the proposed legislation is inclusive, and work has been done on this particularly, we can't include criminal orders. I just think if you are going to adopt the Uniform law and not adopt the uniform definition, you don't have uniform laws.

**Rep. Delmore:** We also talked about when this first came about our reservations. What does this bill really do to help us do a better job on the reservations in North Dakota.

**Judge Hagerty:** I think you got some information that current law didn't deal with those orders, and that wasn't correct. Current law does allow enforcement, but there is definitely a real lack of training and knowledge about that. If we have this, there will be training. Law enforcement officers will be trained, I'm told. This will include training in regard to tribal orders and I think that the fact that the law will continue to do training. This will give another opportunity for training on that issue.

Page 3  
House Judiciary Committee  
Bill/Resolution Number HB 1072  
Hearing Date 2-17-03

**Rep. Delmore:** Do we amend other Uniform Laws because we think there are things that will make it better in North Dakota.

**Judge Hagerty:** If you amend some provisions of Uniform Laws, and they don't have to be absolutely uniform. A key definition would be different than some other provision, I think.

**Chairman DeKrey:** Thank you.

**Bonnie Palacek, Exec. Director, NDCAWS/CASAND:** The definition is very broad. I think that as states implement these laws, changes will be proposed as time goes on. There is a difference of opinion on the definition on the national level as well. We would certainly be in favor of the amendment that Judge Hagerty suggested, sending a copy of the order to the clerk would be good, the training would be good, as well as the penalty for multiple violations. This would create a whole new section of the law, and would definitely need law enforcement training. The last amendment is with the definition of "omission". Right now our state law provides for immunity for liability for law enforcement officers if they act in good faith.

**Chairman DeKrey:** Thank you. We will now close the hearing. What are the committee's wishes in regard to HB 1072.

**Rep. Eckre:** I move the Hagerty amendments: On page 4, line 23, add the language from pg. 2 of Judge Hagerty's letter of January 16, 2003, as follows: "If a foreign order is registered, the clerk of district court shall transmit a copy of the order to the appropriate local law enforcement agency" and page 5, line 15, change it from Class A felony back to a Class C felony.

**Rep. Maragos:** Seconded.

Voice vote: Carried.

**Rep. Delmore:** I move the Delmore amendments.



Page 4  
House Judiciary Committee  
Bill/Resolution Number HB 1072  
Hearing Date 2-17-03

**Rep. Onstad:** Seconded.

Voice vote: Failed.

**Rep. Kretschmar:** I move a Do Pass as amended.

**Rep. Klemin:** Seconded.

13 YES 0 NO 0 ABSENT      DO PASS AS AMENDED      CARRIER: Rep. DeKrey

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*10/2/03*  
Date

30306.0101  
Title.0200

Adopted by the Judiciary Committee  
February 17, 2003

12  
2/17/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1072 JUD 2-17-03

Page 4, line 23, after the underscored period insert "If a foreign order is registered, the clerk of district court shall transmit a copy of the order to the appropriate law enforcement agency."

HOUSE AMENDMENT TO HB 1072 JUD 2-17-03  
Page 5, line 15, replace "A" with "C"

Renumber accordingly

Page No. 1

30306.0101

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10/2/03  
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Date: 2/17/03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1072

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Delmore Amendments - Voice Vote

Motion Made By

Rep. Delmore Seconded By Rep. Onstad

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey		✓	Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre		✓
Rep. Bernstein		✓	Rep. Onstad	✓	
Rep. Boehning		✓			
Rep. Galvin		✓			
Rep. Grande		✓			
Rep. Kingsbury		✓			
Rep. Klemin		✓			
Rep. Kretschmar		✓			
Rep. Wrangham		✓			

Total (Yes) 3 No 10

Absent 0

Floor Assignment FAIL - voice vote

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

Date: 2/17/03  
Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1072

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30306.0101 .0200

Action Taken Do Pass as Amended

Motion Made By Rep. Kretschmar Seconded By Rep. Klemm

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	✓		Rep. Onstad	✓	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemm	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. DeKrey

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

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10/2/03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
February 17, 2003 4:54 p.m.

Module No: HR-30-2987  
Carrier: DeKrey  
Insert LC: 30306.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**

**HB 1072: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1072 was placed on the Sixth order on the calendar.**

Page 4, line 23, after the underscored period insert "If a foreign order is registered, the clerk of district court shall transmit a copy of the order to the appropriate law enforcement agency."

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

Renumber accordingly

2003 SENATE JUDICIARY

HB 1072

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10/2/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1072

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/10/03

Tape Number	Side A	Side B	Meter #
1	X		0.0 - 19.9
Committee Clerk Signature <i>Maria L Solberg</i>			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill:

**Testimony Support of HB 1072**

Gail Hagerty, District Judge - Introduced the bill (meter 0.4) Read Testimony - Attachment #1

Senator Stanley W. Lyson, discussed how many other states have this bill? Three or Four.

John Olson - Attorney representing Peace Officers Association and State Attorneys Association (meter 3.0) are in support of this bill

Senator Carolyn Nelson questioned if this bill was in conflict with any other code presently out there or in the process of being acted on? This bill would supersede any legislation out there.

Christine Hogen, State Bar Association (meter 4.4) We support this bill because it will provide uniformity across the state by superseding any other legislation

Page 2

Senate Judiciary Committee

Bill/Resolution Number HB 1072

Hearing Date 03/10/03

Senator Carolyn Nelson asked what amendments were done out of the bill by the house.

Discussion of the worded "foreign" meaning "from another state"

Barry Mayer, Fraternal Order of Police (meter 6.1) We are in support of this bill. Discussed personal situation.

Sen. Nelson discussed if MN passed this version of domestic violence legislation and how is this being handled along the Red River border towns, are we all operating under the same rule? I do not know. If there is a protection order in MN this bill brings these into line with ours.

Discussion of tribal courts (meter 7.2)

Bonnie Palecek on behalf of ND Council on Abused Women's Services in support (meter 7.7)

Read Testimony - Attachment #2

Discussion of uniform protection forms (meter 9.1) While we have concerns on the definition of abuse, disorderly conduct, and the conditions of stalking, we are happy with the bill.

Sen. Dever asked what changes Ms. Palecek would change? I was told that the changes I would like are unconstitutional. I would like to see the protection order in the Violence Against

Women act-Discussion (meter 10.0) It was noted that this bill was in this committee last session and why it failed. (meter 18.5) Discussion of history of bill.

Testimony in opposition of HB 1072

None

Testimony Neutral to HB 1072

None



Page 3

Senate Judiciary Committee

Bill/Resolution Number HB 1072

Hearing Date 03/10/03

Motion Made to DO PASS HB 1072 Senator Stanley W. Lyson, Vice Chairman and

seconded by Senator Carolyn Nelson .

Roll Call Vote: 6 Yes. 0 No. 0 Absent

Motion Passed

Floor Assignment: Sen. Dever

Senator John T. Traynor, Chairman closed the hearing

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*10/2/03*  
Date

Date: March 10, 2003  
Roll Call Vote #: 1

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1072**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

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

Action Taken DO PASS

Motion Made By Sen. Trenbeath Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) SIX (6) No ZERO (0)

Absent ZERO (0)

Floor Assignment Sen. Dever

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

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10/2/03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
March 10, 2003 12:47 p.m.

Module No: SR-42-4331  
Carrier: Dever  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

HB 1072, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1072 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-42-4331

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*10/2/03*  
Date

2003 TESTIMONY  
HB 1072

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10/2/03  
Date

**STATE OF NORTH DAKOTA**

DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT  
P.O. Box 1013  
BISMARCK, NORTH DAKOTA 58502

(701) 222-6682  
FAX (701) 222-6689

MAIL HAGENTY  
JUDGE

January 16, 2003

Honorable Duane DeKrey  
State Representative  
600 E. Boulevard Ave.  
Bismarck, ND 58505

**Re: HB1072- Uniform Interstate Enforcement of Domestic-Violence Protection Orders**

Dear Rep. DeKrey:

I testified Wednesday, January 15, in support of House Bill 1072. There were some objections raised to the bill, and I indicated I would respond to those objections.

I continue to be convinced that House Bill 1072, the Uniform Interstate Enforcement of Domestic-Violence Protection Orders improves on current North Dakota Law.

The committee was told that the proposed legislation had a very narrow definition of a protection order. In fact, the definition is as follows:

"Protection order" means an injunction or other order, issued by a tribunal under the domestic violence or family violence laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, of physical proximity to another individual. The term includes an injunction or other order issued under the antistalking laws of the issuing state.

Current North Dakota law only provides for enforcement of foreign domestic violence protection orders. No definition is provided, and the term could not include an injunction or other order issued under antistalking laws. The proposed legislation requires that North Dakota courts enforce orders which were obtained in an independent action (an action for the primary purpose of obtaining a protection order) AND orders issued in another proceeding (not solely for the purpose of obtaining a protection order) in response to a request filed on behalf of an individual seeking protection. Criminal orders lie outside the full faith and credit clause's enforcement provisions. There is a long line of U.S. Supreme Court cases indicating states cannot be compelled to enforce criminal orders of another state (or sovereignty).

While the definition does not specifically include disorderly conduct orders, that term is not included in current North Dakota law dealing with enforcement of domestic violence protection orders.

Current North Dakota law does not give direction concerning whether provisions in a foreign domestic violence protection order which would not be permissible in North Dakota should be enforced. The proposed legislation makes it clear that such provisions are to be enforced.

The proposed legislation makes it clear North Dakota courts are to enforce provisions of a foreign protection order which govern custody and visitation. Current law does not address that issue.

The proposed legislation gives courts direction in enforcement of "mutual" protection orders. Such orders are to be enforced only if both parties actively sought protection and the Court issuing the order made specific findings in favor of the respondent. Current North Dakota law does not include a similar provision.

Under current North Dakota law, law enforcement officers would have to see a copy of a foreign protection order before they could act on it. Under the proposal, a law enforcement officer called on to enforce a foreign domestic violence protection order could consider information available in determining whether there is probable cause to believe a valid foreign protection order exists. Presentation of a copy of the order would not be required.

The proposed act also requires that if a law enforcement officer determines a foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the officer must inform the respondent of the order and make a reasonable effort to serve it.

The proposed legislation provides for registration of foreign domestic violence protection orders. I would suggest amending the registration provisions to require the clerks of court to transmit a copy of the order to the appropriate local law enforcement agency. For instance:

*pg 4 line 27*  
**If a foreign order is registered, the clerk of district court shall transmit a copy of the order to the appropriate local law enforcement agency.**

*pg 5 line 15*  
I believe the penalty provisions should be amended so that a second or subsequent violation would be a class C felony.

The immunity provision in the proposed act is a fair and equitable provision. Apparently the objection to it is that such immunity already exists. The objection apparently is that specifying immunity for good faith actions or failure to act may encourage the officer not to act. The provision is a fair statement of the law.

A major objection to the proposed legislation seems to be an argument that it would require training. The North Dakota Peace Officer's Association supports the bill. There is no suggestion from law enforcement that training would present any difficulty. In fact, after each legislative session, officers are trained concerning changes in the law. There is ongoing training in law enforcement agencies. It would seem advantageous to have domestic violence protection order training included in the ongoing training at law enforcement agencies.

6p

The Uniform Interstate Enforcement of Domestic Violence Protection Orders Act is the product of several years of study. It was considered by a committee made up of judges and lawyers from around the country with input from every imaginable interest group. It was read at the Conference of Commissioners on Uniform State Laws at two separate summer meetings and debated fully. Minor changes were made at the annual meeting in 2002 to deal with concerns of federal agencies.

This is an area in which uniform law is desirable. The proposal is a good one, and I hope it will be adopted.

Sincerely,

Gail Hagerty

Gail Hagerty

copies: Bonnie Palacek, Council on Abused Women's Services  
John Olson, North Dakota Peace Officers Association  
Jim Vukelic  
Christine Hogan  
Justice Marian Opala, Oklahoma Supreme Court (chair of drafting committee for the Uniform Act)

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10/2/03

Date

Suggested Amendments to HB1072

Definition of Domestic Violence

p.2 lines 5-10 delete and replace with: "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 temporary and final orders issued by civil and criminal courts whether obtained by filing an independent action or as a pendent 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 another person seeking protection."

This language is from the federal Violence Against Women Act passed in 1994. (18 U.S.C. 2266)

Exclusion of Criminal Orders

p.2 delete lines 26-28: "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."

Custody

p. 2 lines 29-31, p.3 lines 1-2. Delete and replace with: "The State of North Dakota shall enforce the provisions of a valid protection order which governs custody and visitation if the order is in accordance with applicable federal and state jurisdictional requirements."

Immunity

p.5, line 8. Delete "or omission."



**BISMARCK**  
Abused Adult Resource Center  
222-8370

**BOTTINEAU**  
Family Crisis Center  
228

**LAKE**  
Alternatives for  
Abused Families  
1-800-662-7378

**DICKINSON**  
Domestic Violence and  
Rape Crisis Center  
225-4506

**ELLENDALE**  
Kodish House  
349-4729

**FARGO**  
Rape and Abuse Crisis Center  
800-344-7273

**FORT BERTHOLD RESERVATION**  
Coalition Against  
Domestic Violence  
627-4171

**FORT YATES**  
Tender Heart Against  
Domestic Violence  
854-3402

**GRAFTON**  
Tri-County Crisis  
Intervention Center  
352-4242

**GRAND FORKS**  
Community Violence  
Intervention Center  
305

**HELMSTOWN**  
S.A.F.E. Shelter  
888-353-7233

**MCLEAN COUNTY**  
McLean Family  
Resource Center  
800-651-8643

**MERCER COUNTY**  
Women's Action and  
Resource Center  
873-2274

**MINOT**  
Domestic Violence Crisis  
Center  
852-2258

**RANSOM COUNTY**  
Abuse Resource Network  
683-5061

**STANLEY**  
Domestic Violence Program,  
NW, ND  
628-3233

**VALLEY CITY**  
Abused Persons Outreach  
Center  
845-0078

**WAHPETON**  
Rivers Crisis Center  
305

**WILLISTON**  
Family Crisis Shelter  
572-0757

Chair Duane DeKrey  
Testimony on HB 1072  
House Judiciary Committee  
January 15, 2003

Chair Dekrey and Members of the Committee:  
My name is Bonnie Palecek and I speak this afternoon on behalf of the ND Council on  
Abused Women's Services. It is our position that it would be in the best interests of victims to  
keep our current full faith and credit statute and amend into it the most significant addition to  
the HB 1072, the section relating to custody.

As many of you know, simply stated, full faith and credit means that a valid protection order  
is enforceable where it is issued and in all other jurisdictions. This includes all 50 states,  
Indian tribal lands, the District of Columbia, and US Territories. It was initiated under the  
federal Violence Against Women's Act of 1994.

In 1999, North Dakota adopted its own enabling legislation based on a model developed by  
the National Full Faith and Credit Project based in Washington, D.C. All states except South  
Dakota have since adopted enabling legislation, and South Dakota has a bill pending at this  
time.

Full Faith and Credit is an extremely important concept for us because of the fact that victims  
of domestic violence often must flee to other jurisdictions to be safe. To have orders which  
look similar and are consistently enforced is a key element to victim safety, and we have  
embraced not only the letter but the spirit of that law.

Our hesitation to adopt the National Commission on Uniform State Laws (NCUSL) language  
embodied in HB 1072 and repeal our existing North Dakota statute is based on our concern  
that in several respects our current law is, in fact, better, and that adopting HB 1072 would  
create training challenges and inconsistencies with other parts of our statute.

One substantive concern has to do with the definition of a protection order. The NCUSL  
definition is very narrow. Full Faith and Credit is limited to orders issued under "family  
violence laws" of the issuing state. Although it acknowledges that anti-stalking laws are  
included, it is unclear whether this definition is broad enough to include our disorderly  
conduct orders, which can be issued in the state to protect victims of domestic violence as  
well as protection orders. The NCUSL bill does not use the federal Violence Against Women



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Act (VAWA) definition, which is very broad, just as North Dakota's is. Other states or tribes, as in North Dakota, may very well have statutes in other parts of their codes which protect victims of intimate partner violence. VAWA anticipates that, but the language you have before you does not. We see that as a detrimental narrowing.

Our second concern is the exclusion of criminal orders in full faith and credit protection. Although this type of order is not used extensively in the state, it is used on the Turtle Mountain reservation in lieu of a civil protection order process. Under the definition in HB 1072, their orders would not be honored in District Court, as they are now, and they currently would be without recourse for the majority of cases now assisted by their victim assistance program.

Our third concern is the provision establishing immunity for acts of omission in enforcing orders. We believe implying that this immunity is guaranteed is misleading because although the language implies immunity for not acting, in fact general good faith protections already protect officers when they use their professional judgment and act – or don't act – in good faith. The only times they have been sued have been in cases which are very egregious, such as the famous Tracy Thurman case in Connecticut and cases in which there was a "special relationship" between law enforcement and the victim. We wouldn't want to extend immunity carte blanche in those circumstances.

I realize that one of the biggest fears peace officers have is being sued for "false arrest." This plays directly into the hands of manipulative abusers who use that threat to coerce officers into refusing to act.

In fact, nearly all case law going back several years supports the fact that it is a far greater liability risk not to act than to act.

The whole idea of immunity is to protect officers from abusers' threats to sue so that the officer will act to protect the victim. The goal is to protect the survivor and not punish the officer for acting to protect. North Dakota's current law reflects that philosophy.

Finally, HB 1072 provides a penalty for a violation that is inconsistent with our current law. The proposed penalty is a class A felony for a second or subsequent violation, and North Dakota's penalty is a Class C felony. We would not object to a higher penalty, but this does become a training issue because unless we changed our penalty, we would have one penalty for violating out of state orders and another for violating in-state orders.

Actually, all of these changes would necessitate serious training, and as I understand it, the Attorney General's training budget has been severely constrained. Whose responsibility would it be to provide the training? Since 1999, we have been doing much of it, but our training budgets are being constrained too.

There is one aspect of HB 1072 which we would very much like to see adopted in our current statute (14-07.1-06). This is the section on custody. Clarification in this area has been a grave need all along. We would propose adopting the following language. "The state of North Dakota shall enforce the provisions of a valid protection order which governs custody and visitation if the order is in accordance with applicable federal and state jurisdictional requirements." This language is somewhat broader than what is in HB 1072, and would allow provisions of Parental Kidnapping Protection Act (PKPA) and possibly even the Indian Child Welfare Act (ICWA) to be included.

This addition would allow North Dakota to honor custody provisions of a protection order protecting any victim who fled to this state from another state or territory or tribal lands.

I want to make it clear that NDCAWS fully supports the concept of uniformity of laws and processes which facilitate the protection of victims. We have worked closely to adopt protection order forms which look physically like those in surrounding states; we have continued to work with the ND Supreme Court on standardized PO's and a computerized courts record project as well as with BCI on the federal registry of protection orders.

But we honestly feel that HB1072 would not be a step forward for North Dakota. Therefore we respectfully request that you not adopt HB 1072, and consider amending 14-07.1-02.2 relating to custody as we have suggested.

Thank you.

*Bonnie Paluch*  
Executive Director  
NDCAWS / CASAND

4

Testimony of James M. Vukelic in support of House Bill No. 1072 (Uniform Enforcement of Domestic Violence Protection Orders Act)

Date: January 15, 2003

Chairman DeKrey and Member of the House Judiciary Committee:

Good afternoon. My name is Jim Vukelic. I serve as Chief Prosecutor for the Standing Rock Sioux Tribe. I am here to speak in support of HB 1072. From my perspective, adoption of the Uniform Enforcement of Domestic Violence Protection Orders Act would represent a major advance in the protection of people from domestic abuse.

Allow me to give you an example. Last year, a young woman in Sioux County came to our office with a report of domestic violence. Her former boyfriend learned she was pregnant, came to her house, argued with her, and eventually slapped her and threw her around the living room. He was charged with Domestic Abuse.

At his initial appearance, he pled not guilty and was released on bond. Upon my advice, the victim sought and was granted a domestic violence protection order by the Standing Rock Sioux Tribal Court.

The victim moved to Bismarck to work and attend college. The defendant spent much of his time in Bismarck as well. One night, a week before his trial on the domestic abuse charge, the defendant confronted the victim at a local hotel. Her mother was present and reminded the defendant of the protection order

issued by the Tribal Court. He scoffed at her and continued to verbally harass the victim.

Two days later, the defendant confronted the victim again, this time at a bar. He wanted her to "drop the charges." I should back up a bit and tell you that Standing Rock has fairly strict laws concerning domestic violence. A first offense carries a mandatory ten-day jail sentence and counseling. This defendant knew he was looking at some jail time if his case went to court.

When confronted by the defendant at the bar, the victim could see the defendant had been drinking so she asked a friend to use her cell phone and call the Bismarck Police Department. When the victim explained the situation to the police, they said they could not help her. They had no authority to enforce a Tribal Court protection order, they told her. Luckily, both of the confrontations ended without physical violence.

The next day, the victim called me, obviously upset. I told her the police were correct but she could seek a protection order in Burleigh County District Court, an order the police could enforce. I then explained to her the procedure involved in seeking and obtaining a protection order from a state court. She quickly pointed out the problem she faced.

For a protection order to be effective it must be served on the defendant. Until the defendant has received notice that contact with the victim is prohibited, there can be no violation of the protection order. The sheriffs of North Dakota typically serve protection orders and other legal papers on defendants. They are called process servers when they act in this capacity. Savvy Indian defendants

avoid state process servers by moving to the reservation. This victim knew her ex-boyfriend well enough to be sure he would do exactly that.

The result: this victim, like many others, could not obtain the protection she truly needed. She had some protection while she was on Standing Rock Reservation but was at risk when she crossed the north banks of the Cannonball River into Morton County. North Dakota citizens, regardless of their residence, should have equal protection under law.

This bill not only addresses the problem; it fixes it. Along with protection orders issued by courts in other states, full recognition is given to Tribal Court orders so long as defendants are afforded due process by those Tribal Court orders. Standing Rock's Tribal Court procedures for issuing protection orders are virtually identical to those in state court.

A secondary benefit derived from passing this law, in my opinion, is the affirmation of tribal sovereignty. Tribal courts have long been viewed in the federal court system as less-than-competent stepchildren. Whatever the realities were decades ago, tribal courts today deserve recognition for the work they do. Given the resources available to them, they do a remarkable job in dispensing justice.

By adopting this bill, the North Dakota Legislative Assembly will give added protection to victims of domestic violence while affirming the good work done by tribal courts throughout the nation. I urge your "Do Pass" recommendation on HB 1072. Thank you.

Att #1

## Testimony on House Bill 1072

Gail Hagerty  
District Judge

House Bill 1072, the Uniform Interstate Enforcement of Domestic-Violence Protection Orders improves on current North Dakota Law.

The proposed legislation defines a protection order as follows:

"Protection order" means an injunction or other order, issued by a tribunal under the domestic violence or family violence laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to another individual. The term includes an injunction or other order issued under the antistalking laws of the issuing state.

Current North Dakota law only provides for enforcement of foreign domestic violence protection orders. No definition is provided, and the term could not include an injunction or other order issued under antistalking laws. The proposed legislation requires that North Dakota courts enforce orders which were obtained in an independent action (an action for the primary purpose of obtaining a protection order) AND orders issued in another proceeding (not solely for the purpose of obtaining a protection order) in response to a request filed on behalf of an individual seeking protection. Criminal orders lie outside the full faith and credit clause's enforcement provisions. There is a long line of U.S. Supreme Court cases indicating states cannot be compelled to enforce criminal orders of another state (or sovereignty).

While the definition does not specifically include disorderly conduct orders, that term is not included in current North Dakota law dealing with enforcement of domestic violence protection orders.

Current North Dakota law does not give direction concerning whether provisions in a foreign domestic violence protection order which would not be permissible in North Dakota should be enforced. The proposed legislation makes it clear that such provisions are to be enforced.

The proposed legislation makes it clear North Dakota courts are to enforce provisions of a foreign protection order which govern custody and visitation. Current law does not address that issue.

The proposed legislation gives courts direction in enforcement of "mutual" protection orders. Such orders are to be enforced only if both parties actively sought protection and the Court issuing the order made specific findings in favor of the respondent. Current North Dakota law does not include a similar provision.

Under current North Dakota law, law enforcement officers would have to see a copy of a foreign protection order before they could act on it. Under the proposal, a law enforcement officer called on to enforce a foreign domestic violence protection order could consider information

Gail Hagerty  
Operator's Signature

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available in determining whether there is probable cause to believe a valid foreign protection order exists. Presentation of a copy of the order would not be required.

The proposed act also requires that if a law enforcement officer determines a foreign protection order cannot be enforced because the respondent has not been notified or served with the order, the office must inform the respondent of the order and make a reasonable effort to serve it.

The immunity provision in the proposed act is a fair and equitable provision. Apparently the objection to it is that such immunity already exists. The objection apparently is that specifying immunity for good faith actions or failure to act may encourage the officer not to act. The provision is a fair statement of the law.

The Uniform Interstate Enforcement of Domestic Violence Protection Orders Act is the product of several years of study. It was considered by a committee made up of judges and lawyers from around the country with input from every imaginable interest group. It was read at the Conference of Commissioners on Uniform State Laws at two separate summer meetings and debated fully. Minor changes were made at the annual meeting in 2002 to deal with concerns of federal agencies.

This is an area in which uniform law is desirable. The proposal is a good one, and I hope it will be adopted.



HH # 2

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683-5061

**STANLEY**  
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NW, ND  
628-3233

**VALLEY CITY**  
Abused Persons Outreach  
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845-0078

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Rivers Crisis Center  
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**WILLISTON**  
Family Crisis Shelter  
572-0757

Chair Jack Traynor  
Testimony on HB 1072  
Senate Judiciary Committee  
March 10, 2003

Chair Traynor and Members of the Committee:

My name is Bonnie Palecek and I speak on behalf of the ND Council on Abused Women's Services in support of HB 1072. We will, however, be submitting amendments which we believe will make it stronger.

As many of you know, simply stated, full faith and credit means that a valid protection order is enforceable where it is issued and in all other jurisdictions. This includes all 50 states, Indian tribal lands, the District of Columbia, and US Territories. It was initiated under the federal Violence Against Women's Act of 1994.

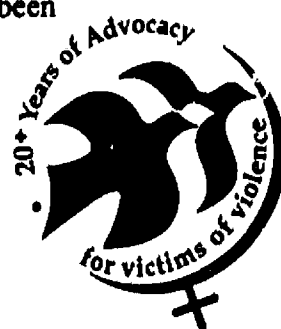
IN 1999, North Dakota adopted its own enabling legislation based on a model developed by the National Full Faith and Credit Project based in Washington, D.C. All states have now adopted enabling legislation.

Full Faith and Credit is an extremely important concept for us because of the fact that victims of domestic violence often must flee to other jurisdictions to be safe. To have orders which look similar and are consistently enforced is a key element to victim safety, and we have embraced not only the letter but the spirit of that law.

We still hesitate to adopt the National Commission on Uniform State Laws (NCUSL) language embodied in HB 1072 exactly as exists, however.

One concern has to do with the definition of a protection order. The NCUSL definition is very narrow. Full Faith and Credit is limited to orders issued under "family violence laws" of the issuing state. Although it acknowledges that anti-stalking laws are included, it is unclear whether this definition is broad enough to include our disorderly conduct orders, which can be issued in the state to protect victims of domestic violence as well as protection orders. In addition it would not be clear to judge whether orders issued under divorce codes, child protection laws, or other anti-harassment laws would be eligible. If indeed the NCUSL definition is to be broadly construed, we think specifics should be spelled out in the statute itself.

The NCUSL bill does not use the federal Violence Against Women Act (VAWA) definition, which is very broad, just as North Dakota's is. Other states or tribes, as in North Dakota, may very well have statutes in other parts of their codes which protect victims of intimate partner violence. VAWA anticipates that, but the language you have before you does not. We see that as a detrimental narrowing, and have not been convinced that a narrower definition is necessary.



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Our second concern is the exclusion of criminal orders in full faith and credit protection. Although this type of order is not used extensively in the state, it is used on the Turtle Mountain reservation in lieu of a civil protection order process. Under the definition in HB 1072, their orders would not be honored in District Court, as they are now, and they currently would be without recourse for the majority of cases now assisted by their victim assistance program. We realize that this is a complicated legal issue, but we don't understand why we would want to adopt a definition in state law which would clearly be in conflict with the federal law (VAWA) which includes both criminal and civil court orders (18 U.S.C. 2266).

There is one aspect of HB 1072 which we strongly support. This is the section on custody. Clarification in this area has been a grave need all along. This addition would allow North Dakota to honor custody provisions of a protection order protecting any victim who fled to this state from another state or territory of tribal lands, and many cases, this is a critical matter of life and death.

NDCAWS fully supports the concept of uniformity of laws and processes which facilitate the protection of victims. We have worked closely to adopt protection order forms which

look physically like those in surrounding states; we have continued to work with the ND Supreme Court on standardized PO's and a computerized courts records project as well as with BCI on the federal registry of protection orders.

The adoption of the NCUSL language for full faith and credit has been hotly debated on a national level. Indeed it was shaped and changed since its adoption nearly two years ago in large part because of that debate, and we feel this bill is much better than what you had before you in 2001, a bill that we opposed without extensive amendments.

In fairness, the adoption of the NCUSL language has been slow. To date, only six states have adopted it, and some with amendments. Ironically, South Dakota adopted a bill just last month based in large part on our current statute,

Again, HB 1072 has several important provisions which we believe are in the best interest of victims. We respectfully ask your adoption of our amendments as part of the passage of this bill.

Thank you.

*Bonnie Plesch*