

2042 VIOLATING A FOREIGN PROTECTION ORDER — § 813.128**Statutory Definition of the Crime**

Violating a foreign protection order, as defined in § 813.128 of the Wisconsin Statutes, is committed by one who knowingly violates a condition of a foreign protection order that is entitled to full faith and credit under § 806.247.¹

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following four elements were present.

Elements of the Crime That the State Must Prove

1. A foreign protection order was issued against (name of defendant).
2. The foreign protection order was entitled to full faith and credit under § 806.247.
3. The defendant committed an act that violated a condition of the foreign protection order.²
4. The defendant knew that the foreign protection order had been issued and knew that (his) (her) acts violated its terms.

Definition of Foreign Protection Order

"Foreign protection order" means any temporary or permanent injunction or order of a civil or criminal court (of the United States) (of an Indian tribe) (of any other state) issued for preventing abuse, bodily harm, communication, contact, harassment, physical

proximity, threatening acts or violence by or to a person, other than support or custody orders.³

Determination of Full Faith and Credit

"Full faith and credit" means that an order from a court outside the state is enforced as if the order was an order of a court in this state. An order shall be accorded full faith and credit if all of the following conditions are met:⁴

- the person against whom the order was issued received reasonable notice; and,
- the person against whom the order was issued received an opportunity to be heard that was sufficient to protect (his) (her) right to due process; and,
- the court that issued the order had jurisdiction over the parties and over the subject matter.

Deciding About Knowledge

You cannot look into a person's mind to find knowledge. Knowledge must be found, if found at all, from the defendant's acts, words, and statements, if any, and from all the facts and circumstances in this case bearing upon knowledge.

Jury's Decision

If you are satisfied beyond a reasonable doubt that all four elements of this offense have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 2042 was approved by the Committee in December 2001.

Section 813.128(1) provides that a "foreign protection order or modification of a foreign protection order that meets the requirements under s. 806.247(2) has the same effect as an order issued under s. 813.12, 813.122, 813.123, or 813.125, except that the foreign protection order or modification shall be enforced according to its own terms." Subsection (2) provides a criminal penalty [a fine of not more than \$1,000 or imprisonment for not more than 9 months or both] for "a person who knowingly violates a condition of a foreign protection order. . ."

This instruction follows the approach used for violations of the other restraining order/injunction statutes. See Wis JI-Criminal 2040.

1. The Committee concluded that the "full faith and credit" issue is a fact that the jury must find. This is based on the conclusion that it is part of the definition of the crime in § 813.128(2): "A person who knowingly violates a condition of a foreign protection order . . . that is entitled to full faith and credit . . ."

This conclusion is consistent with the decision of the U.S. Supreme Court in United States v. Gaudin, 515 U.S. 506 (1995). That decision resolved a split among the federal circuits regarding whether "materiality" under a federal false swearing statute was a fact that the jury must decide. The court rejected the Government's argument that "materiality" was a legal question to which the right to a jury determination does not attach. The court stated:

. . . [T]he resolution of the question before us seems simple. The Constitution gives a criminal defendant the right to demand that a jury find him guilty of all the elements of the crime with which he is charged; one of the elements in the present case is materiality; respondent therefore had a right to have the jury decide materiality.
515 U.S. 506, 511.

2. Section 813.128(2) applies to one who "knowingly violates a condition of a foreign protection order or modification of a foreign protection order ..." The instruction refers only to violating a condition of the order, the Committee having concluded that it should be sufficient to cover a violation of a modification to an original order.

3. This is the definition of "foreign protection order" provided in § 806.247(1)(b) without change.

4. The requirements for "full faith and credit" are based on the conditions set forth in § 806.247(2)(a). Expert testimony may be required to establish that the procedures in the foreign jurisdiction meet these requirements.