

2 **ESHB 2756** - S AMD TO S AMD (S-5376.2/98) - 944
3 By Senators Haugen, Roach and Fairley

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5 Beginning on page 1, line 7 of the amendment, strike all of section
6 1 and insert the following:

7 "NEW SECTION. **Sec. 1.** CITATION. Sections 1 through 10 of this
8 act may be known and cited as the Foreign Protection Order Full Faith
9 and Credit Act.

10 NEW SECTION. **Sec. 2.** LEGISLATIVE INTENT. The problem of women
11 fleeing across state lines to escape their abusers is epidemic in the
12 United States. In 1994, Congress enacted the Violence Against Women
13 Act (VAWA) as Title IV of the Violent Crime Control and Law Enforcement
14 Act (P.L. 103-322). The VAWA provides for improved prevention and
15 prosecution of violent crimes against women and children. Section 2265
16 of the VAWA (Title IV, P.L. 103-322) provides for nation-wide
17 enforcement of civil and criminal protection orders in state and tribal
18 courts throughout the country.

19 The legislature finds that existing statutes may not provide an
20 adequate mechanism for victims, police, prosecutors, and courts to
21 enforce a foreign protection order in our state. It is the intent of
22 the legislature that the barriers faced by persons entitled to
23 protection under a foreign protection order will be removed and that
24 violations of foreign protection orders be criminally prosecuted in
25 this state.

26 NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this
27 section apply throughout this chapter unless the context clearly
28 requires otherwise.

29 (1) "Domestic or family violence" includes, but is not limited to,
30 conduct when committed by one family member against another that is
31 classified in the jurisdiction where the conduct occurred as a domestic
32 violence crime or a crime committed in another jurisdiction that under
33 the laws of this state would be classified as domestic violence under
34 RCW 10.99.020.

1 (2) "Family or household members" means spouses, former spouses,
2 persons who have a child in common regardless of whether they have been
3 married or have lived together at any time, adult persons related by
4 blood or marriage, adult persons who are presently residing together or
5 who have resided together in the past, persons sixteen years of age or
6 older who are presently residing together or who have resided together
7 in the past and who have or have had a dating relationship, persons
8 sixteen years of age or older with whom a person sixteen years of age
9 or older has or has had a dating relationship, and persons who have a
10 biological or legal parent-child relationship, including stepparents
11 and stepchildren and grandparents and grandchildren.

12 (3) "Foreign protection order" means an injunction or other order
13 related to domestic or family violence, harassment, sexual abuse, or
14 stalking, for the purpose of preventing violent or threatening acts or
15 harassment against, or contact or communication with or physical
16 proximity to another person issued by a court of another state,
17 territory, or possession of the United States, the Commonwealth of
18 Puerto Rico, or the District of Columbia, or any United States military
19 tribunal, or a tribal court, in a civil or criminal action.

20 (4) "Harassment" includes, but is not limited to, conduct that is
21 classified in the jurisdiction where the conduct occurred as harassment
22 or a crime committed in another jurisdiction that under the laws of
23 this state would be classified as harassment under RCW 9A.46.020.

24 (5) "Judicial day" does not include Saturdays, Sundays, or legal
25 holidays in Washington state.

26 (6) "Person entitled to protection" means a person, regardless of
27 whether the person was the moving party in the foreign jurisdiction,
28 who is benefited by the foreign protection order.

29 (7) "Person under restraint" means a person, regardless of whether
30 the person was the responding party in the foreign jurisdiction, whose
31 ability to contact or communicate with another person, or to be
32 physically close to another person, is restricted by the foreign
33 protection order.

34 (8) "Sexual abuse" includes, but is not limited to, conduct that is
35 classified in the jurisdiction where the conduct occurred as a sex
36 offense or a crime committed in another jurisdiction that under the
37 laws of this state would be classified as a sex offense under RCW
38 9.94A.030.

1 (9) "Stalking" includes, but is not limited to, conduct that is
2 classified in the jurisdiction where the conduct occurred as stalking
3 or a crime committed in another jurisdiction that under the laws of
4 this state would be classified as stalking under RCW 9A.46.110.

5 (10) "Washington court" includes the superior, district, and
6 municipal courts of the state of Washington.

7 NEW SECTION. **Sec. 4.** VALID FOREIGN PROTECTION ORDERS. A foreign
8 protection order is valid if the issuing court had jurisdiction over
9 the parties and matter under the law of the state, territory, or
10 possession, or tribe or United States military tribunal. There is a
11 presumption in favor of validity where an order appears authentic on
12 its face.

13 NEW SECTION. **Sec. 5.** ENFORCEABILITY HEARING. (1) A person under
14 restraint by a foreign protection order filed under section 6 of this
15 act may request a hearing from a court of competent jurisdiction in
16 this state on whether the foreign protection order may be enforced in
17 this state.

18 (2) The court shall review the foreign protection order to
19 determine whether the statute or ordinance under which the order was
20 entered prohibits conduct that would permit the entry of an order in
21 this state. If the court determines the prohibited conduct would
22 permit entry of an order in this state, the foreign protection order
23 shall be enforced in any subsequent proceeding and will be treated as
24 valid by all peace officers. If the court determines that the foreign
25 protection order is invalid, the court shall issue an order declaring
26 that the foreign protection order shall not be enforced.

27 (3) In arrest and criminal proceedings, a foreign protection order
28 is valid unless it has been determined invalid by a proceeding under
29 subsection (2) of this section, and no defense exists that the conduct
30 on which the foreign protection order was issued is not recognized as
31 the basis for entry of a protection order in this state.

32 NEW SECTION. **Sec. 6.** FILING OF FOREIGN PROTECTION ORDERS. (1) A
33 person entitled to protection who has a valid foreign protection order
34 may file that order by presenting a certified, authenticated, or
35 exemplified copy of the foreign protection order to a clerk of the
36 court of a Washington court in which the person entitled to protection

1 resides or to a clerk of the court of a Washington court where the
2 person entitled to protection believes enforcement may be necessary.

3 (2) Filing of a foreign protection order with a court and entry of
4 the foreign protection order into any computer-based criminal
5 intelligence information system available in this state used by law
6 enforcement agencies to list outstanding warrants are not prerequisites
7 for enforcement of the foreign protection order.

8 (3) The court shall accept the filing of a foreign protection order
9 without a fee or cost.

10 (4) The clerk of the court shall provide information to a person
11 entitled to protection of the availability of domestic violence, sexual
12 abuse, and other services to victims in the community where the court
13 is located and in the state.

14 (5) The clerk of the court shall assist the person entitled to
15 protection in completing an information form that must include, but
16 need not be limited to, the following:

17 (a) The name of the person entitled to protection and any other
18 protected parties;

19 (b) The name and address of the person who is subject to the
20 restraint provisions of the foreign protection order;

21 (c) The date the foreign protection order was entered;

22 (d) The date the foreign protection order expires;

23 (e) The relief granted under (specify the
24 relief awarded and citations thereto, and designate which of the
25 violations are arrestable offenses);

26 (f) The judicial district and contact information for court
27 administration for the court in which the foreign protection order was
28 entered;

29 (g) The Social Security number, date of birth, and description of
30 the person subject to the restraint provisions of the foreign
31 protection order;

32 (h) Whether the person who is subject to the restraint provisions
33 of the foreign protection order is believed to be armed and dangerous;

34 (i) Whether the person who is subject to the restraint provisions
35 of the foreign protection order was served with the order, and if so,
36 the method used to serve the order.

37 An inability to answer any of the above questions does not preclude
38 the filing or enforcement of a foreign protection order.

1 (6) The clerk of the court shall provide the person entitled to
2 protection with a copy bearing proof of filing with the court.

3 (7) Any assistance provided by the clerk under this section does
4 not constitute the practice of law. The clerk is not liable for any
5 incomplete or incorrect information that he or she is provided.

6 NEW SECTION. **Sec. 7.** TRANSMITTAL OF FILED FOREIGN PROTECTION
7 ORDERS TO LAW ENFORCEMENT AGENCY. (1) The clerk of the court shall
8 forward a copy of a foreign protection order that is filed under this
9 chapter on or before the next judicial day to the county sheriff along
10 with the completed information form.

11 Upon receipt of a filed foreign protection order, the county
12 sheriff shall immediately enter the foreign protection order into any
13 computer-based criminal intelligence information system available in
14 this state used by law enforcement agencies to list outstanding
15 warrants. The foreign protection order must remain in the computer for
16 the period stated in the order. The county sheriff shall only expunge
17 from the computer-based criminal intelligence information system
18 foreign protection orders that are expired, vacated, or superseded.
19 Entry into the law enforcement information system constitutes notice to
20 all law enforcement agencies of the existence of the foreign protection
21 order. The foreign protection order is fully enforceable in any county
22 in the state.

23 (2) The information entered into the computer-based criminal
24 intelligence information system must include, if available, notice to
25 law enforcement whether the foreign protection order was served and the
26 method of service.

27 NEW SECTION. **Sec. 8.** PEACE OFFICER IMMUNITY. A peace officer or
28 a peace officer's legal advisor may not be held criminally or civilly
29 liable for making an arrest under this chapter if the peace officer or
30 the peace officer's legal advisor acted in good faith and without
31 malice.

32 NEW SECTION. **Sec. 9.** FEES NOT PERMITTED. A public agency may not
33 charge a fee for filing or preparation of certified, authenticated, or
34 exemplified copies to a person entitled to protection who seeks relief
35 under this chapter or to a foreign prosecutor or a foreign law
36 enforcement agency seeking to enforce a protection order entered by a

1 Washington court. A person entitled to protection and foreign
2 prosecutors or law enforcement agencies must be provided the necessary
3 number of certified, authenticated, or exemplified copies at no cost.

4 NEW SECTION. **Sec. 10.** VIOLATION OF FOREIGN ORDERS. (1) Whenever
5 a foreign protection order is granted to a person entitled to
6 protection and the person under restraint knows of the foreign
7 protection order, a violation of a provision prohibiting the person
8 under restraint from contacting or communicating with another person,
9 or of a provision excluding the person under restraint from a
10 residence, workplace, school, or day care, or a violation of any
11 provision for which the foreign protection order specifically indicates
12 that a violation will be a crime, is a gross misdemeanor except as
13 provided in subsections (3) and (4) of this section. Upon conviction,
14 and in addition to any other penalties provided by law, the court may
15 require the person under restraint to submit to electronic monitoring.
16 The court shall specify who will provide the electronic monitoring
17 services, and the terms under which the monitoring will be performed.
18 The order also may include a requirement that the person under
19 restraint pay the costs of the monitoring. The court shall consider
20 the ability of the convicted person to pay for electronic monitoring.

21 (2) A peace officer shall arrest without a warrant and take into
22 custody a person when the peace officer has probable cause to believe
23 that a foreign protection order has been issued of which the person
24 under restraint has knowledge and the person under restraint has
25 violated a provision of the foreign protection order that prohibits the
26 person under restraint from contacting or communicating with another
27 person, or a provision that excludes the person under restraint from a
28 residence, workplace, school, or day care, or a violation of any
29 provision for which the foreign protection order specifically indicates
30 that a violation will be a crime. Presence of the order in the law
31 enforcement computer-based criminal intelligence information system is
32 not the only means of establishing knowledge of the order.

33 (3) An assault that is a violation of a valid foreign protection
34 order that does not amount to assault in the first or second degree
35 under RCW 9A.36.011 or 9A.36.021 is a class C felony, and conduct in
36 violation of a valid foreign protection order issued under this chapter
37 that is reckless and creates a substantial risk of death or serious
38 physical injury to another person is a class C felony.

1 (4) A violation of a valid foreign protection order is a class C
2 felony if the offender has at least two previous convictions for
3 violating the provisions of a no-contact order issued under chapter
4 10.99 RCW, a domestic violence protection order issued under chapter
5 26.09, 26.10, 26.26, or 26.50 RCW, or a federal or out-of-state order
6 that is comparable to a no-contact or protection order issued under
7 Washington law. The previous convictions may involve the same person
8 entitled to protection or other person entitled to protection
9 specifically protected by the no-contact orders or protection orders
10 the offender violated.

11 **Sec. 11.** RCW 10.31.100 and 1997 c 66 s 10 are each amended to read
12 as follows:

13 A police officer having probable cause to believe that a person has
14 committed or is committing a felony shall have the authority to arrest
15 the person without a warrant. A police officer may arrest a person
16 without a warrant for committing a misdemeanor or gross misdemeanor
17 only when the offense is committed in the presence of the officer,
18 except as provided in subsections (1) through (10) of this section.

19 (1) Any police officer having probable cause to believe that a
20 person has committed or is committing a misdemeanor or gross
21 misdemeanor, involving physical harm or threats of harm to any person
22 or property or the unlawful taking of property or involving the use or
23 possession of cannabis, or involving the acquisition, possession, or
24 consumption of alcohol by a person under the age of twenty-one years
25 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070
26 or 9A.52.080, shall have the authority to arrest the person.

27 (2) A police officer shall arrest and take into custody, pending
28 release on bail, personal recognizance, or court order, a person
29 without a warrant when the officer has probable cause to believe that:

30 (a) An order has been issued of which the person has knowledge
31 under RCW 10.99.040(2), 10.99.050, 26.09.050, 26.09.060, 26.10.040,
32 26.10.115, 26.44.063, chapter 26.26 RCW, or chapter 26.50 RCW
33 restraining the person and the person has violated the terms of the
34 order restraining the person from: (i) Acts or threats of violence;
35 (ii) contacting another person; (iii) intentionally coming within a
36 specified distance of a location specified in the order; or
37 ~~((restraining the person from))~~ (iv) going onto the grounds of ((or)),
38 entering, or coming within a specified distance of a residence,

1 workplace, school, or day care or, in the case of an order issued under
2 RCW 26.44.063, imposing any other restrictions or conditions upon the
3 person; or

4 (b) A foreign protection order, as defined in section 3 of this
5 act, has been issued of which the person under restraint has knowledge
6 and the person under restraint has violated a provision of the foreign
7 protection order prohibiting the person under restraint from contacting
8 or communicating with another person, or of a provision excluding the
9 person under restraint from a residence, workplace, school, or day
10 care, or a violation of any provision for which the foreign protection
11 order specifically indicates that a violation will be a crime; or

12 (c) The person is sixteen years or older and within the preceding
13 four hours has assaulted a family or household member as defined in RCW
14 10.99.020 and the officer believes: (i) A felonious assault has
15 occurred; (ii) an assault has occurred which has resulted in bodily
16 injury to the victim, whether the injury is observable by the
17 responding officer or not; or (iii) that any physical action has
18 occurred which was intended to cause another person reasonably to fear
19 imminent serious bodily injury or death. Bodily injury means physical
20 pain, illness, or an impairment of physical condition. When the
21 officer has probable cause to believe that family or household members
22 have assaulted each other, the officer is not required to arrest both
23 persons. The officer shall arrest the person whom the officer believes
24 to be the primary physical aggressor. In making this determination,
25 the officer shall make every reasonable effort to consider: (A) The
26 intent to protect victims of domestic violence under RCW 10.99.010; (B)
27 the comparative extent of injuries inflicted or serious threats
28 creating fear of physical injury; and (C) the history of domestic
29 violence between the persons involved.

30 (3) Any police officer having probable cause to believe that a
31 person has committed or is committing a violation of any of the
32 following traffic laws shall have the authority to arrest the person:

33 (a) RCW 46.52.010, relating to duty on striking an unattended car
34 or other property;

35 (b) RCW 46.52.020, relating to duty in case of injury to or death
36 of a person or damage to an attended vehicle;

37 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or
38 racing of vehicles;

1 (d) RCW 46.61.502 or 46.61.504, relating to persons under the
2 influence of intoxicating liquor or drugs;

3 (e) RCW 46.20.342, relating to driving a motor vehicle while
4 operator's license is suspended or revoked;

5 (f) RCW 46.61.5249, relating to operating a motor vehicle in a
6 negligent manner.

7 (4) A law enforcement officer investigating at the scene of a motor
8 vehicle accident may arrest the driver of a motor vehicle involved in
9 the accident if the officer has probable cause to believe that the
10 driver has committed in connection with the accident a violation of any
11 traffic law or regulation.

12 (5) Any police officer having probable cause to believe that a
13 person has committed or is committing a violation of RCW 88.12.025
14 shall have the authority to arrest the person.

15 (6) An officer may act upon the request of a law enforcement
16 officer in whose presence a traffic infraction was committed, to stop,
17 detain, arrest, or issue a notice of traffic infraction to the driver
18 who is believed to have committed the infraction. The request by the
19 witnessing officer shall give an officer the authority to take
20 appropriate action under the laws of the state of Washington.

21 (7) Any police officer having probable cause to believe that a
22 person has committed or is committing any act of indecent exposure, as
23 defined in RCW 9A.88.010, may arrest the person.

24 (8) A police officer may arrest and take into custody, pending
25 release on bail, personal recognizance, or court order, a person
26 without a warrant when the officer has probable cause to believe that
27 an order has been issued of which the person has knowledge under
28 chapter 10.14 RCW and the person has violated the terms of that order.

29 (9) Any police officer having probable cause to believe that a
30 person has, within twenty-four hours of the alleged violation,
31 committed a violation of RCW 9A.50.020 may arrest such person.

32 (10) A police officer having probable cause to believe that a
33 person illegally possesses or illegally has possessed a firearm or
34 other dangerous weapon on private or public elementary or secondary
35 school premises shall have the authority to arrest the person.

36 For purposes of this subsection, the term "firearm" has the meaning
37 defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning
38 defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

1 (11) Except as specifically provided in subsections (2), (3), (4),
2 and (6) of this section, nothing in this section extends or otherwise
3 affects the powers of arrest prescribed in Title 46 RCW.

4 (12) No police officer may be held criminally or civilly liable for
5 making an arrest pursuant to RCW 10.31.100 (2) or (8) if the police
6 officer acts in good faith and without malice."

7 Renumber the sections following consecutively and correct any
8 internal references accordingly.

9 **ESHB 2756** - S AMD TO S AMD (S-5376.2/98)
10 By Senator

11

12 On page 32, after line 2 of the amendment, insert the following:

13 "NEW SECTION. **Sec. 30.** Sections 1 through 10 and 31 of this act
14 constitute a new chapter in Title 26 RCW.

15 NEW SECTION. **Sec. 31.** CAPTIONS NOT LAW. Captions used in this
16 chapter are not part of the law.

17 NEW SECTION. **Sec. 32.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected."

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24 On page 32, line 7 of the title amendment, after "insert" strike
25 "and" and on line 10, after "10.99.050" insert "; adding a new chapter
26 to Title 26 RCW; and prescribing penalties"

--- END ---