

HOUSE BILL REPORT

HB 2532

As Reported By House Committee On:
Law & Justice

Title: An act relating to full faith and credit for foreign protection orders.

Brief Description: Recognizing foreign protection orders.

Sponsors: Representatives Sheahan, Costa, Lambert, Cody, Sterk, Veloria, Mason, Kenney, O'Brien, Cole, Conway, Dickerson, Chopp, Kessler, Constantine and Wood.

Brief History:

Committee Activity:

Law & Justice: 1/28/98, 2/6/98 [DPS].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Carrell; Cody; Kenney; Lambert; Lantz; Mulliken; Robertson and Sherstad.

Staff: Edie Adams (786-7180).

Background: State law provides a number of protections for persons who are victims of domestic violence, abuse, or harassment. In the criminal context, a victim of domestic violence may be protected by a no-contact order restraining the offender from contacting the victim. In the civil context, a victim may petition for a domestic violence protection order or an anti-harassment protection order. In a pending dissolution, third-party custody, paternity action, or an action relating to the abuse of a child or dependent person, a person may seek a restraining order against another party.

A violation of a no-contact or protection order is generally a gross misdemeanor offense. A violation of a no-contact or protection order is a class C felony if the offender has two previous violations of an order, or if the violation involved an assault that is not first- or second-degree assault, or conduct that is reckless and creates a substantial risk of death or serious physical injury to another person. A violation of a provision of a restraining order is a misdemeanor offense.

A police officer must arrest a person without a warrant if the officer has probable cause to believe that the person has violated a no-contact, protection, or restraining order, of which the person had knowledge, that restrains the person from acts or threats of violence; or from going onto the grounds of or entering a residence, workplace, school, or day care. A police officer is immune from criminal and civil liability for making an arrest under this provision if the officer acted in good faith and without malice.

In 1994, Congress enacted the Violence Against Women Act (VAWA) as part of the Violent Crime Control and Law Enforcement Act. In addition to a number of other provisions concerning domestic violence, VAWA contains a requirement that each state, United States territory or possession, and tribal court provide full faith and credit to protection orders issued by another state, United States territory or possession, or tribal court. The issuing court must have had both personal and subject matter jurisdiction, and reasonable notice and an opportunity to be heard must have been provided to the person subject to the restraint provisions of the order.

Summary of Substitute Bill: A statutory procedure for the filing and enforcement of foreign protection orders is created. "Foreign protection order" means an order related to domestic or family violence, harassment, sexual abuse, or stalking for the purpose of preventing violent or threatening acts or harassment against, contact or communication with, or physical proximity to another person issued by a court of another state, territory, possession, a military tribunal, or a tribal court in a civil or criminal action.

A foreign protection order is valid if the issuing court had jurisdiction over the parties and matter under the law of the jurisdiction. A presumption is created that a foreign protection order is valid if it appears authentic on its face.

A procedure is created for filing foreign protection orders by presenting a certified, authenticated, or exemplified copy to the clerk of the Washington court where the person entitled to protection resides or believes enforcement may be necessary. The clerk may not charge a fee or cost for the filing of foreign protection orders, and must provide information to the person entitled to protection concerning the availability of victim resources in the community and in the state. Assistance provided by a clerk does not constitute the practice of law. The clerk is not liable for incomplete or incorrect information provided to the clerk.

The court clerk must forward a copy of the filed foreign protection order to the county sheriff who must enter the order into a computer-based criminal intelligence information system used by law enforcement agencies to list outstanding warrants. The order must stay in the system for the period specified in the order and may only be expunged if the order is expired, vacated, or superseded.

Filing of a foreign protection order and entry of the order into a criminal intelligence information system are not prerequisites for enforcement of the order. The order is enforceable in any county of the state.

It is a misdemeanor offense for a person under restraint who knows of the foreign protection order to violate any of the following provisions of the order: a provision prohibiting the person under restraint from contacting or communicating with another person; a provision excluding the person under restraint from a residence, workplace, school, or day care; or any provision for which the foreign protection order specifically provides that a violation is a crime. As part of the sentence, the court may require the person under restraint to submit to electronic monitoring.

A violation of a foreign protection order is a class C felony, ranked at seriousness level V under the Sentencing Reform Act, in the following three circumstances: the violation is an assault that does not amount to assault in the first- or second-degree; the violation involved conduct that is reckless and creates a substantial risk of death or serious physical injury to another person; or the offender has at least two prior convictions for violating the provision of a no-contact order, a domestic violence protection order, or a comparable federal or out-of-state order.

A police officer must arrest a person under restraint when the officer has probable cause to believe that the person violated a provision of a foreign protection order, of which the person had knowledge, prohibiting the person from contacting or communicating with another person, excluding the person from a residence, workplace, school, or day care, or any provision for which the foreign protection order specifically provides that a violation is a crime.

A peace officer and a peace officer's legal advisor are provided immunity from criminal or civil liability for making an arrest for a violation of a foreign protection order if the officer or the legal advisor acted in good faith and without malice.

A public agency is prohibited from charging a fee for filing or preparation of certified, authenticated, or exemplified copies to a person entitled to protection, or to foreign prosecutors or law enforcement agencies seeking to enforce a Washington protection order.

Substitute Bill Compared to Original Bill: The original bill did not provide that assistance provided by clerks is not the practice of law and that clerks are not liable for incorrect information provided to them. The original bill did not include immunity for the legal advisor of a peace officer.

Appropriation: None.

Fiscal Note: Requested on January 22, 1998.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: This legislation is needed in order to implement the requirements in the Violence Against Women Act that states enforce protection orders from other states. There is no justification for not protecting victims who flee perpetrators who then follow them across state lines. It is essential to have compliance with the federal requirements; it is even more important to send the right message to victims and perpetrators. This will be especially helpful for women who live near a state border and frequently cross state lines. There are some concerns with orders that are entered into the system because it will be hard to tell if an order has been expunged. Washington is one of only twelve states that have not passed implementing legislation. Implementing legislation is needed because there are several difficulties in getting a state order.

Testimony Against: There is some concern with how these foreign orders will be enforced. There is no way of knowing what other states do and whether the out-of-state order is valid. The bill creates a presumption that they are valid but sometimes they aren't valid. They have expired or been vacated. It isn't always clear on the face of the order what the order restrains. Once the order is entered into the data base, it can't be taken out unless the issuing state notifies this state that the order is expired or vacated. This could lead to the wrongful arrests of people. This bill is unnecessary because the victim can get a restraining or protective order in Washington.

Testified: Debbie Wilke, Washington Association of County Officials (pro); Jennifer Shaw, Washington Defenders Association and Washington Association of Criminal Defense Lawyers (con); Mary Pontarolo, Washington State Coalition Against Domestic Violence (pro); Judge James Riehl, Kitsap County District Court (pro); Pamela Loginsky, Kitsap County Prosecuting Attorney and Washington Association of Prosecuting Attorneys (pro); Suzanne Brown, Washington Coalition of Sexual Assault Programs (pro); Larry Erickson, Washington Association of Sheriffs and Police Chiefs (pro, with concerns); and Mary C. Brown, Department of Community, Trade, and Economic Development, Program Manager, Violence Against Women Grants (pro).