

SENATE BILL REPORT

SB 5134

As Reported By Senate Committee On:
Judiciary, February 24, 1999

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

Brief Description: Removing barriers faced by persons entitled to a foreign protection order.

Sponsors: Senators Wojahn, Long, Patterson, Roach, Costa, Thibaudeau, Goings, McAuliffe, Kline, Brown, McCaslin, Heavey, Johnson, Prentice, Snyder and Kohl-Welles.

Brief History:

Committee Activity: Judiciary: 2/5/99, 2/24/99 [DPS, DNPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5134 be substituted therefor, and the substitute bill do pass.

Signed by Senators Heavey, Chair; Kline, Vice Chair; Costa, Goings, Long, McCaslin and Thibaudeau.

Minority Report: Do not pass substitute.

Signed by Senator Hargrove.

Staff: Lidia Mori (786-7755)

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 prohibiting 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. 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. 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 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. The purpose of the foreign protection order is to prevent violent or threatening acts or harassment against, contact or communication with, or physical proximity to another person. It must be issued by a court of another state, United States territory or 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. The person subject to the restraint provisions of the order must have been given reasonable notice and the opportunity to be heard before the foreign order was issued. In the case of ex parte orders, notice and opportunity to be heard must have been given as soon as possible after the order was issued, consistent with due process. The failure to provide reasonable notice and opportunity to be heard is an affirmative defense to any charge or process filed seeking enforcement of a foreign protection order.

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. Any out-of-state department, agency or court responsible for maintaining protection order records may by facsimile or electronic transmission send a copy of the foreign protection order to the clerk of the Washington court as long as it contains a facsimile or digital signature by a person authorized to make the transmission. The clerk may not charge a fee for the filing of foreign protection orders.

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 information entered into the criminal intelligence information system must include, if available, notice to law enforcement of whether the foreign order was served and method of service.

It is a gross misdemeanor for a person under restraint who knows of the foreign protection order to violate the provision prohibiting the person from contacting or communicating with another person; the provision excluding the person from a residence, workplace, school, or day care; or any provision for which the foreign protection order specifically provides that violation is a crime. Violation of a restraining order issued in a nonparental proceeding for child custody or a paternity action is a gross misdemeanor when the person restrained knows of the order.

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 provisions 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.

The person entitled to protection must divulge other orders between the parties in order to alert the court to the existence of other orders or conditions that exist between the protected party and the person under restraint. Any disputes regarding provisions in foreign protection orders dealing with custody of children or visitation issues are to be resolved judicially. A peace officer is not to remove a child from his or her current placement unless a writ of habeas corpus issued by a court of this state is produced or the officer believes the child would be injured or could not be taken into custody if it were necessary to first obtain a court order.

Substitute Bill Compared to Original Bill: Language was added requiring the person entitled to protection to divulge other orders between the parties in order to alert the court to the existence of other orders or conditions that exist between the protected party and the person under restraint. Duplicative language is removed. Clarification is added for law enforcement regarding how they must respond when presented with a foreign order and custody is at issue.

Appropriation: None.

Fiscal Note: Requested on February 2, 1999.

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

Testimony For: This bill is patterned after model legislation. It will allow prosecutors to prosecute domestic violence perpetrators that have fled their jurisdiction. The police gain arrest powers under this bill in situations where there is domestic violence and the victim has a foreign protection order.

Testimony Against: None.

Testified: PRO: Senator Wojahn, prime sponsor; Mary Pontarolo, WA State Coalition Against Domestic Violence; Pam Loginsky, WA Assn. of Prosecuting Attorneys; Judge Mary Wynne, Sherry Yeats, WA State Coalition Against Domestic Violence; Ina Percival, Kent Domestic Violence Programs; Terry Lufkin, Vancouver Domestic Violence Programs, Deborah Robbins, Spokane Domestic Violence Programs.