

SENATE BILL REPORT

SHB 2532

As of February 23, 1998

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

Brief Description: Recognizing foreign protection orders.

Sponsors: House Committee on Law & Justice (originally sponsored by 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: 2/23/98.

SENATE COMMITTEE ON LAW & JUSTICE

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 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 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.

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 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.

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.

Appropriation: None.

Fiscal Note: Requested on January 22, 1998.

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