

HOUSE BILL ANALYSIS

SSB 5134

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

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

Sponsors: Senate Committee on Judiciary (originally sponsored by Senators Wojahn, Long, Patterson, Roach, Costa, Thibaudeau, Goings, McAuliffe, Kline, Brown, McCaslin, Heavey, Johnson, Prentice, Snyder and Kohl-Welles).

Brief Summary of Bill

- Allows courts and law enforcement agencies to recognize and enforce protection orders issued by out-of-state jurisdictions.
- Increases the penalty for violating certain restraining orders.

HOUSE COMMITTEE ON JUDICIARY

Staff: Jim Morishima (786-7191).

Background:

I. Foreign Protection Orders

Federal law requires a state court to give full faith and credit to a protection order from another state if: (1) the order was issued by a court having jurisdiction over the parties; and (2) the issuing jurisdiction provided the person subject to the order with notice and an opportunity to be heard consistent with due process of law. The courts and law enforcement agencies of Washington have no express authority to enforce a protection order issued by another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, the District of Columbia, a United States military tribunal, or a tribal court.

II. Domestic Protection Orders

A victim of domestic violence, harassment, or stalking can pursue several avenues of relief in Washington. For example, a victim of domestic violence can obtain a domestic violence protection order. A victim of unlawful harassment can obtain a civil anti-harassment protection order. A court can also impose a no-contact order

upon defendants who are convicted of crimes relating to domestic violence, harassment, or stalking.

A victim of domestic violence or harassment can also obtain a restraining order in the context of other actions. For example, a person can obtain a restraining order against another party in a nonparental action for child custody. Similarly, a person can obtain a restraining order against another party in a paternity or maternity action. Knowing violations of such restraining orders are misdemeanors.

An officer can arrest a person without a warrant if the officer has probable cause to believe the person knowingly violated a protection or restraining order.

Summary of Bill:

I. Foreign Protection Orders

A person entitled to protection under a valid foreign protection order may file that order with a superior, district, or municipal court. A foreign protection order is an injunction or similar order relating to domestic violence, harassment, sexual abuse, or stalking issued by a court of another state, territory, or possession of the United States, the Commonwealth of Puerto Rico, the District of Columbia, a United States military tribunal, or a tribal court. In order for a foreign protection order to be valid, it must have been issued by a court having jurisdiction over the parties, and the issuing jurisdiction must have provided the person subject to the order with notice and an opportunity to be heard consistent with due process of law. A foreign protection order is presumed valid if it appears authentic on its face.

In order to file the foreign protection order, the person entitled to protection under the order can take the order to the clerk of the superior, district, or municipal court where the person lives or where the person believes that enforcement may be necessary. The person can have the order faxed to the clerk as long as the fax contains the signature of the person authorized to send the fax in the foreign jurisdiction. The clerk must accept the filing without fee or cost to the person entitled to the protection order. The clerk must provide the person with a copy of the order bearing proof that the order has been filed with the court.

As part of the filing process, the clerk must help the person fill out an information form that includes: (1) the person's name; (2) the name, address, Social Security number, date of birth, and description of the person subject to the protection order; (3) the date the protection order expires; (4) the date the protection order was granted; (5) the relief granted by the protection order; (6) contact information for the court that granted the protection order; (7) whether the person subject to the protection order is considered armed and dangerous; (8) whether the person subject to the protection order was served with the order and method of such service; and (9) a

list of any other legal proceedings between the person and the person subject to restraint under the order. The person's failure to provide any of the above information does not affect the validity of the protection order.

The clerk must forward the protection order and the information form to the county sheriff on or before the next judicial day. The sheriff must then enter the protection order into the computerized system used by law enforcement to list outstanding warrants.

An officer must arrest a person without a warrant if the officer has probable cause to believe the person is knowingly violating a foreign protection order. An officer who arrests a person for violating a foreign protection order in good faith and without malice is immune from civil and criminal liability arising from the arrest. Knowing violation of a foreign protection order is a gross misdemeanor unless: (1) the violation involves an assault or reckless conduct that creates a substantial risk of death or serious injury to another person; or (2) the respondent has two previous convictions for violating a no-contact order, a domestic violence protection order, or other similar federal or out-of-state order, in which case the violation is a class C felony.

Disputes regarding foreign protection orders involving children must be resolved judicially. A law enforcement officer may not remove a child from his or her current placement unless: (1) a writ of habeas corpus to produce the child has been issued by the superior court; or (2) the officer has probable cause to believe that the child would be injured or could not be taken into custody if it were necessary to first obtain a court order under the dependency statute.

II. Domestic Protection Orders

Violation of a restraining order issued as part of a nonparental action for child custody, a paternity action, or a maternity action is a gross misdemeanor.

Fiscal Note: Available.

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

Office of Program Research