

Chapter 26.52 RCW

FOREIGN PROTECTION ORDER FULL FAITH AND CREDIT ACT

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26.52.005 Findings—Intent. The problem of women fleeing across state lines to escape their abusers is epidemic in the United States. In 1994, Congress enacted the violence against women act (VAWA) as Title IV of the violent crime control and law enforcement act (P.L. 103-322). The VAWA provides for improved prevention and prosecution of violent crimes against women and children. Section 2265 of the VAWA (Title IV, P.L. 103-322) provides for nationwide enforcement of civil and criminal protection orders in state and tribal courts throughout the country.

The legislature finds that existing statutes may not provide an adequate mechanism for victims, police, prosecutors, and courts to enforce a foreign protection order in our state. It is the intent of the legislature that the barriers faced by persons entitled to protection under a foreign protection order will be removed and that violations of foreign protection orders be criminally prosecuted in this state. [1999 c 184 § 2.]

26.52.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

(2) "Family or household members" means spouses, former spouses, persons who have a child in common regardless of whether they have been married or have lived together at any time, adult persons related by blood or marriage,

adult persons who are presently residing together or who have resided together in the past, persons sixteen years of age or older who are presently residing together or who have resided together in the past and who have or have had a dating relationship, persons sixteen years of age or older with whom a person sixteen years of age or older has or has had a dating relationship, and persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren.

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

(4) "Harassment" includes, but is not limited to, conduct that is classified in the jurisdiction where the conduct occurred as harassment or a crime committed in another jurisdiction that under the laws of this state would be classified as harassment under RCW 9A.46.040.

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

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

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

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

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

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(10) "Washington court" includes the superior, district, and municipal courts of the state of Washington. [1999 c 184 § 3.]

26.52.020 Foreign protection orders—Validity. A foreign protection order is valid if the issuing court had jurisdiction over the parties and matter under the law of the state, territory, possession, tribe, or United States military tribunal. There is a presumption in favor of validity where an order appears authentic on its face.

A person under restraint must be given reasonable notice and the opportunity to be heard before the order of the foreign state, territory, possession, tribe, or United States military tribunal was issued, provided, in the case of ex parte orders, notice and opportunity to be heard was given as soon as possible after the order was issued, consistent with due process. [1999 c 184 § 4.]

26.52.030 Foreign protection orders—Filing—Assistance. (1) A person entitled to protection who has a valid foreign protection order may file that order by presenting a certified, authenticated, or exemplified copy of the foreign protection order to a clerk of the court of a Washington court in which the person entitled to protection resides or to a clerk of the court of a Washington court where the person entitled to protection 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 reproduction of the foreign protection order to the clerk of the court of Washington as long as it contains a facsimile or digital signature by any person authorized to make such transmission.

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

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

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

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

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

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

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

(d) The date the foreign protection order expires;

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

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

(g) The social security number, date of birth, and description of the person subject to the restraint provisions of the foreign protection order;

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

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

(j) The type and location of any other legal proceedings between the person who is subject to the restraint provisions and the person entitled to protection.

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

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

(7) Any assistance provided by the clerk under this section does not constitute the practice of law. The clerk is not liable for any incomplete or incorrect information that he or she is provided. [1999 c 184 § 5.]

26.52.040 Filed foreign protection orders—Transmittal to law enforcement agency—Entry into law enforcement information system. (1) The clerk of the court shall forward a copy of a foreign protection order that is filed under this chapter on or before the next judicial day to the county sheriff along with the completed information form. The clerk may forward the foreign protection order to the county sheriff by facsimile or electronic transmission.

Upon receipt of a filed foreign protection order, the county sheriff shall immediately enter the foreign protection order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The foreign protection order must remain in the computer for the period stated in the order. The county sheriff shall only expunge from the computer-based criminal intelligence information system foreign protection orders that are expired, vacated, or superseded. Entry into the

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law enforcement information system constitutes notice to all law enforcement agencies of the existence of the foreign protection order. The foreign protection order is fully enforceable in any county in the state.

(2) The information entered into the computer-based criminal intelligence information system must include, if available, notice to law enforcement whether the foreign protection order was served and the method of service. [1999 c 184 § 6.]

26.52.050 Peace officer immunity. A peace officer or a peace officer's legal advisor may not be held criminally or civilly liable for making an arrest under this chapter if the peace officer or the peace officer's legal advisor acted in good faith and without malice. [1999 c 184 § 7.]

26.52.060 Fees not permitted for filing, preparation, or copies. A public agency may not charge a fee for filing or preparation of certified, authenticated, or exemplified copies to a person entitled to protection who seeks relief under this chapter or to a foreign prosecutor or a foreign law enforcement agency seeking to enforce a protection order entered by a Washington court. A person entitled to protection and foreign prosecutors or law enforcement agencies must be provided the necessary number of certified, authenticated, or exemplified copies at no cost. [1999 c 184 § 8.]

26.52.070 Violation of foreign orders—Penalties. (1) Whenever a foreign protection order is granted to a person entitled to protection and the person under restraint knows of the foreign protection order, a violation of a provision prohibiting the person under restraint from contacting or communicating with another person, or of a provision excluding the person under restraint from a residence, workplace, school, or day care, or of a provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime, is punishable under RCW 26.50.110.

(2) A peace officer shall arrest without a warrant and take into custody a person when the peace officer has probable cause to believe that a foreign protection order has been issued of which the person under restraint has knowledge and the person under restraint has violated a provision of the foreign protection order that prohibits the person under restraint from contacting or communicating with another person, or a provision that excludes the person under restraint from a residence, workplace, school, or day care, or of a provision prohibiting a person from

knowingly coming within, or knowingly remaining within, a specified distance of a location, or a violation of any provision for which the foreign protection order specifically indicates that a violation will be a crime. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order. [2000 c 119 § 26; 1999 c 184 § 9.]

Application—2000 c 119: See note following RCW 26.50.021.

Additional notes found at www.leg.wa.gov

26.52.080 Child custody disputes. (1) Any disputes regarding provisions in foreign protection orders dealing with custody of children, residential placement of children, or visitation with children shall be resolved judicially. The proper venue and jurisdiction for such judicial proceedings shall be determined in accordance with chapter 26.27 RCW and in accordance with the parental kidnapping prevention act, 28 U.S.C. 1738A.

(2) A peace officer shall not remove a child from his or her current placement unless:

(a) A writ of habeas corpus to produce the child has been issued by a superior court of this state; or

(b) There is probable cause to believe that the child is abused or neglected and the child would be injured or could not be taken into custody if it were necessary to first obtain a court order pursuant to RCW 13.34.050. [1999 c 184 § 10.]

26.52.900 Short title—1999 c 184. This act may be known and cited as the foreign protection order full faith and credit act. [1999 c 184 § 1.]

