WEST VIRGINIA CODE CHAPTER 48 ARTICLE 28

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§48-28-1. Title.

This article may be cited as the "Uniform Interstate Enforcement of Domestic Violence Protection Orders Act."

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§48-28-2. Definitions.

In this article:

(1) "Court" means a circuit court, family court or magistrate court which has jurisdiction over domestic violence proceedings pursuant to article twenty-seven of this chapter.

(2) "Foreign protection order" means a protection order issued by a tribunal of another state.

(3) "Issuing state" means the state whose tribunal issues a protection order.

(4) "Mutual foreign protection order" means a foreign protection order that includes provisions in favor of both the protected individual seeking enforcement of the order and the respondent.

(5) "Protected individual" means an individual protected by a protection order.

(6) "Protection order" means an injunction or other order, issued by a tribunal under the domestic violence, family violence or antistalking laws of the issuing state, to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to another individual.

(7) "West Virginia protective order" means an order issued pursuant to article twenty-seven of this chapter or to section five hundred nine, article five of this chapter.

(8) "Respondent" means the individual against whom enforcement of a protection order is sought.

(9) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders.

(10) "Tribunal" means a court, agency or other entity authorized by law to issue or modify a protection order.

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§48-28-3. Judicial enforcement of order.

(a) A person authorized by the law of this state to seek enforcement of a West Virginia protective order may seek enforcement of a valid foreign protection order in a court of this state. The court shall enforce the terms of the order, including terms that provide relief that a court of this state would lack power to provide but for this section. The court shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it was issued in response to a complaint, petition or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the court shall follow the procedures of this state for the enforcement of West Virginia protective orders.

(b) A court of this state may not enforce a foreign protection order issued by a tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

(c) A court of this state shall enforce the provisions of a valid foreign protection order which govern custody and visitation if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state or under federal law and with the requirements set out in subsection (d) of this section.

(d) A foreign protection order is valid if it:

(1) Identifies the protected individual and the respondent;

(2) Is currently in effect;

(3) Was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

(4) Was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was given notice and has had or will have an opportunity to be heard within a reasonable time after the order was issued in a manner consistent with the respondent's rights to due process of law.

(e) A foreign protection order which appears authentic on its face is presumed to be valid.

(f) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(g) A court of this state may enforce provisions of a mutual foreign protection order which favor a respondent only if:

(1) The respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and

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(2) The tribunal of the issuing state made specific findings in favor of the respondent.

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§48-28-4. Nonjudicial enforcement of order.

(a) A law-enforcement officer of this state, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were a West Virginia protective order. Presentation of a foreign protection order that identifies both the protected individual and the respondent and that appears, on its face, to be authentic and currently in effect constitutes probable cause to believe that a valid foreign protection order exists. For the purposes of this section, the protection order may be inscribed on a tangible medium or may have been stored in an electronic or other medium if it is retrievable in perceivable form. Presentation of a certified copy of a protection order is not required for enforcement.

(b) If a foreign protection order is not presented, a law-enforcement officer of this state may consider other credible information in determining whether there is probable cause to believe that a valid foreign protection order exists.

(c) If a law-enforcement officer of this state determines that an otherwise valid foreign protection order cannot be enforced because the respondent has not been notified of or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

(d) Registration or filing of an order in this state is not required for the enforcement of a valid foreign protection order pursuant to this article.

(e)(1) If, in the course of conducting an otherwise lawful arrest of a person who is a member of the United States Armed Forces, the West Virginia National Guard, or the National Guard of any other state, a law-enforcement officer of this state:

(A) Determines that a military protective order has been issued against the person subject to arrest and that said order is registered in the Federal Bureau of Investigation's National Crime Information Center database; and

(B) Has probable cause to believe that the person subject to arrest has violated the military protective order;

The law-enforcement officer shall notify the law-enforcement agency that entered the military protective order into the National Crime Information Center database of the arrest and the circumstances thereof.

(2) For purposes of this subsection, "military protective order" means a protective order issued by a commanding officer in the United States Armed Forces, the West Virginia National Guard, or the National Guard of any other state against a person under such officer's command.

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§48-28-5. Registration of order.

(a) Any individual may register a foreign protection order in this state by:

Presenting a certified copy of the order to the West Virginia Supreme Court of Appeals for registration in accordance with the provisions of section eight hundred two, article twenty-seven of this chapter.

(b) An individual registering a foreign protection order shall file an affidavit by the protected individual stating that, to the best of the protected individual's knowledge, the order is currently in effect.

(c) Upon receipt of a foreign protection order for registration, the West Virginia Supreme Court of Appeals shall:

(1) Register the order in accordance with the provisions of this section and of section eight hundred two, article twenty-seven of this chapter;

(2) Furnish to the individual registering the order a copy of the proof of registration of the order.

(d) A registered foreign protection order that is shown to be inaccurate or not currently in effect must be corrected or removed from the registry.

(e) A foreign protection order registered under this article may be entered in any existing state or federal registry of protection orders in accordance with applicable law.

(f) A fee may not be charged for the registration of a foreign protection order.

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§48-28-6. Immunity.

This state or a local governmental agency, or a law-enforcement officer, prosecuting attorney, clerk of court or any state or local governmental official acting in an official capacity, is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission was done in good faith in an effort to comply with this article.

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§48-28-7. Criminal offenses and penalties.

(a) A respondent who abuses, as that term is defined in section two hundred two, article twenty-seven of this chapter, a protected individual or who is physically present at any location in knowing and willful violation of the terms of: (1) A valid foreign protection order; (2) a protection order entered in any pending foreign divorce action which enjoins the offending party from molesting or interfering with another party or interfering with the custodial or visitation rights of another person; or (3) a condition of bail, probation or parole imposed in another state which has the express intent or effect of protecting the personal safety of a particular person or persons is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for a period of not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than $250 nor more than $2,000.

(b) A respondent who is convicted of a second or subsequent offense under subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than three months nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and fined not less than $500 nor more than $3,000.

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§48-28-8. Other remedies.

A protected individual who pursues remedies under this article is not precluded from pursuing other legal or equitable remedies against the respondent.

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§48-28-9. Uniformity of application and construction.

In applying and construing this act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

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§48-28-10. Transitional provision.

This article applies to:

(a) Foreign protection orders issued before the effective date of this article; and

(b) Continuing actions for enforcement of foreign protection orders commenced before the effective date of this article. A request for enforcement, made on or after the effective date of this article, of a foreign protection order based on violations which occurred before the effective date of this article is governed by this article.

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