

CHAPTER 293

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 98-1272

BY REPRESENTATIVES Kaufman, K. Alexander, Allen, Bacon, Dean, Dyer, Epps, Hagedorn, Lawrence, Leyba, Mace, Musgrave, Nichol, Reeser, Smith, Spradley, Tucker, Udall, and Veiga; also SENATORS Perlmutter, Hernandez, Tanner, Tebedo, and Weddig.

AN ACT

CONCERNING DOMESTIC VIOLENCE.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. The introductory portion to 18-1-106 (3) (b), Colorado Revised Statutes, is amended, and the said 18-1-106 (3) (b) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

18-1-106. Misdemeanors classified - penalties. (3) (b) Misdemeanors ~~which~~ THAT present an extraordinary risk of harm to society shall include the following:

(V) SECOND AND ALL SUBSEQUENT VIOLATIONS OF A RESTRAINING ORDER AS DEFINED IN SECTION 18-6-803.5 (1.5) (d).

SECTION 2. 18-6-803.6 (1), Colorado Revised Statutes, is amended to read:

18-6-803.6. Duties of peace officers and prosecuting agencies - preservation of evidence. (1) When a peace officer determines that there is probable cause to believe that a crime or offense involving domestic violence, as defined in section 18-6-800.3 (1), has been committed, the officer shall, without undue delay, arrest the person suspected of its commission PURSUANT TO THE PROVISIONS IN SUBSECTION (2) OF THIS SECTION, IF APPLICABLE, and charge the person with the appropriate crime or offense. NOTHING IN THIS SUBSECTION (1) SHALL BE CONSTRUED TO REQUIRE A PEACE OFFICER TO ARREST BOTH PARTIES INVOLVED IN AN ALLEGED ACT OF DOMESTIC VIOLENCE WHEN BOTH CLAIM TO HAVE BEEN VICTIMS OF SUCH DOMESTIC VIOLENCE.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

ADDITIONALLY, NOTHING IN THIS SUBSECTION (1) SHALL BE CONSTRUED TO REQUIRE A PEACE OFFICER TO ARREST EITHER PARTY INVOLVED IN AN ALLEGED ACT OF DOMESTIC VIOLENCE WHEN A PEACE OFFICER DETERMINES THERE IS NO PROBABLE CAUSE TO BELIEVE THAT A CRIME OR OFFENSE OF DOMESTIC VIOLENCE HAS BEEN COMMITTED. The arrested person shall be removed from the scene of the arrest and shall be taken to the peace officer's station for booking, whereupon the arrested person may be held or released in accordance with the adopted bonding schedules for the jurisdiction in which the arrest is made.

SECTION 3. 18-6-803.5 (1.5) (b), (1.5) (d), and (3) (c), Colorado Revised Statutes, are amended, and the said 18-6-803.5 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

18-6-803.5. Crime of violation of a restraining order - penalty - peace officers' duties. (1.5) As used in this section:

(b) "Registry" means the computerized information system created in section 18-6-803.7 OR THE NATIONAL CRIME INFORMATION CENTER CREATED PURSUANT TO 28 U.S.C. SECTION 534.

(d) "Restraining order" means any order that prohibits the restrained person from contacting, harassing, injuring, intimidating, molesting, threatening, or touching any person, or from entering or remaining on premises, or from coming within a specified distance of a protected person or premises, that is issued by a court of this state or a municipal court, and that is issued pursuant to section 13-6-107, C.R.S., sections 14-4-101 to 14-4-105, C.R.S., section 14-10-107, C.R.S., section 14-10-108, C.R.S., section 18-1-1001, section 19-2-707, C.R.S., section 19-3-316, C.R.S., section 19-4-111, C.R.S., or rule 365 of the Colorado rules of county court civil procedure, an order issued as part of the proceedings concerning a criminal municipal ordinance violation, or any other order of a court that prohibits a person from contacting, harassing, injuring, intimidating, molesting, threatening, or touching any person, or from entering or remaining on premises, or from coming within a specified distance of a protected person or premises. For purposes of this section only, "restraining order" includes any order that amends, modifies, supplements, or supersedes the initial restraining order. "RESTRAINING ORDER" ALSO INCLUDES ANY FOREIGN PROTECTION ORDER AS DEFINED IN SECTION 18-6-803.8.

(3) (c) In making the probable cause determination described in paragraph (b) of this subsection (3), a peace officer shall assume that the information received from the registry ~~created by section 18-6-803.7~~ is accurate. A peace officer shall enforce a valid restraining order whether or not there is a record of the restraining order in the ~~central~~ registry.

(8) A RESTRAINING ORDER ISSUED IN THE STATE OF COLORADO SHALL CONTAIN A STATEMENT THAT:

(a) THE ORDER OR INJUNCTION SHALL BE ACCORDED FULL FAITH AND CREDIT AND BE ENFORCED IN EVERY CIVIL OR CRIMINAL COURT OF THE UNITED STATES, ANOTHER STATE, AN INDIAN TRIBE, OR A UNITED STATES TERRITORY PURSUANT TO 18 U.S.C. SEC. 2265;

(b) THE ISSUING COURT HAD JURISDICTION OVER THE PARTIES AND SUBJECT MATTER; AND

(c) THE DEFENDANT WAS GIVEN REASONABLE NOTICE AND OPPORTUNITY TO BE HEARD.

SECTION 4. 18-6-803.7 (1) (e), Colorado Revised Statutes, is amended to read:

18-6-803.7. Central registry of restraining orders - creation. (1) As used in this section:

(e) "Restraining order" means any order that prohibits the restrained person from contacting, harassing, injuring, intimidating, molesting, threatening, or touching any person, or from entering or remaining on premises, or from coming within a specified distance of a protected person or premises, that is issued by a court of this state or an authorized municipal court, and that is issued pursuant to section 13-6-107, C.R.S., sections 14-4-101 to 14-4-105, C.R.S., section 14-10-107, C.R.S., section 14-10-108, C.R.S., section 18-1-1001, section 19-2-707, C.R.S., section 19-3-316, C.R.S., section 19-4-111, C.R.S., or rule 365 of the Colorado rules of county court civil procedure or an order issued as part of the proceedings concerning a criminal municipal ordinance violation. "RESTRAINING ORDER" ALSO INCLUDES ANY FOREIGN PROTECTION ORDER AS DESCRIBED IN SECTION 18-6-803.8.

SECTION 5. Article 6 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

18-6-803.8. Foreign protection orders. (1) **Legislative declaration.** THE GENERAL ASSEMBLY RECOGNIZES THAT DOMESTIC VIOLENCE IS AN ISSUE OF PUBLIC SAFETY. THE RISK OF HARM TO VICTIMS OF DOMESTIC VIOLENCE IS NOT LIMITED BY STATE BOUNDARIES. VICTIMS HAVE THE RIGHT TO TRAVEL SAFELY FROM ONE STATE, TRIBE, OR TERRITORY TO ANOTHER AND BE AFFORDED THE SAME PROTECTIONS AS THEIR HOME STATE WOULD PROVIDE AGAINST A PERPETRATOR. THEREFORE, THE GENERAL ASSEMBLY FINDS THAT IT IS IN THE STATE'S BEST INTEREST TO ALLOW FOR THE RECOGNITION AND ENFORCEMENT OF FOREIGN PROTECTION ORDERS AS PROVIDED IN THIS SECTION.

(2) **Definition.** AS USED IN THIS SECTION, "FOREIGN PROTECTION ORDER" MEANS ANY PROTECTION OR RESTRAINING ORDER, INJUNCTION, OR OTHER ORDER ISSUED FOR THE PURPOSE OF PREVENTING VIOLENT OR THREATENING ACTS OR HARASSMENT AGAINST, OR CONTACT OR COMMUNICATION WITH OR PHYSICAL PROXIMITY TO, ANOTHER PERSON, INCLUDING TEMPORARY OR FINAL ORDERS, OTHER THAN CHILD SUPPORT OR CUSTODY ORDERS, ISSUED BY A CIVIL OR CRIMINAL COURT OF ANOTHER STATE, AN INDIAN TRIBE, OR A U.S. TERRITORY OR COMMONWEALTH.

(3) **Full faith and credit.** A FOREIGN PROTECTION ORDER SHALL BE ACCORDED FULL FAITH AND CREDIT BY THE COURTS OF THIS STATE AS IF THE ORDER WERE AN ORDER OF THIS STATE, NOTWITHSTANDING SECTION 14-11-101, C.R.S., AND ARTICLE 53 OF TITLE 13, C.R.S., IF THE ORDER MEETS ALL OF THE FOLLOWING CONDITIONS:

(a) THE FOREIGN PROTECTION ORDER WAS OBTAINED AFTER PROVIDING THE PERSON AGAINST WHOM THE PROTECTION ORDER WAS SOUGHT A REASONABLE NOTICE

AND OPPORTUNITY TO BE HEARD SUFFICIENT TO PROTECT HIS OR HER DUE PROCESS RIGHTS. IF THE FOREIGN PROTECTION ORDER IS AN EX PARTE INJUNCTION OR ORDER, THE PERSON AGAINST WHOM IT WAS OBTAINED SHALL HAVE BEEN GIVEN NOTICE AND AN OPPORTUNITY TO BE HEARD WITHIN A REASONABLE TIME AFTER THE ORDER WAS ISSUED SUFFICIENT TO PROTECT HIS OR HER DUE PROCESS RIGHTS.

(b) THE COURT THAT ISSUED THE ORDER HAD JURISDICTION OVER THE PARTIES AND OVER THE SUBJECT MATTER;

(c) THE ORDER COMPLIES WITH SECTION 14-4-102 (13), C.R.S.

(4) **Process.** A PERSON ENTITLED TO PROTECTION UNDER A FOREIGN PROTECTION ORDER MAY, BUT SHALL NOT BE REQUIRED TO, FILE SUCH ORDER IN THE DISTRICT OR COUNTY COURT BY FILING WITH SUCH COURT A CERTIFIED COPY OF SUCH ORDER, WHICH SHALL BE ENTERED INTO THE CENTRAL REGISTRY OF RESTRAINING ORDERS CREATED IN SECTION 18-6-803.7. THE CERTIFIED ORDER SHALL BE ACCOMPANIED BY AN AFFIDAVIT IN WHICH THE PROTECTED PERSON AFFIRMS TO THE BEST OF HIS OR HER KNOWLEDGE THAT THE ORDER HAS NOT BEEN CHANGED OR MODIFIED SINCE IT WAS ISSUED. THERE SHALL BE NO FILING FEE CHARGED. IT IS THE RESPONSIBILITY OF THE PROTECTED PERSON TO NOTIFY THE COURT IF THE PROTECTION ORDER IS SUBSEQUENTLY MODIFIED.

(5) **Enforcement.** FILING OF THE FOREIGN PROTECTION ORDER IN THE CENTRAL REGISTRY OR OTHERWISE DOMESTICATING OR REGISTERING THE ORDER PURSUANT TO ARTICLE 53 OF TITLE 13, C.R.S., OR SECTION 14-11-101, C.R.S., IS NOT A PREREQUISITE TO ENFORCEMENT OF THE FOREIGN PROTECTION ORDER. A PEACE OFFICER SHALL PRESUME THE VALIDITY OF, AND ENFORCE IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE, A FOREIGN PROTECTION ORDER THAT APPEARS TO BE AN AUTHENTIC COURT ORDER THAT HAS BEEN PROVIDED TO THE PEACE OFFICER BY ANY SOURCE. IF THE PROTECTED PARTY DOES NOT HAVE A COPY OF THE FOREIGN PROTECTION ORDER ON HIS OR HER PERSON AND THE PEACE OFFICER DETERMINES THAT A PROTECTION ORDER EXISTS THROUGH THE CENTRAL REGISTRY, THE NATIONAL CRIME INFORMATION CENTER AS DESCRIBED IN 28 U.S.C. SEC. 534, OR COMMUNICATION WITH APPROPRIATE AUTHORITIES, THE PEACE OFFICER SHALL ENFORCE THE ORDER. A PEACE OFFICER MAY RELY UPON THE STATEMENT OF ANY PERSON PROTECTED BY A FOREIGN ORDER THAT IT REMAINS IN EFFECT. A PEACE OFFICER WHO IS ACTING IN GOOD FAITH WHEN ENFORCING A FOREIGN PROTECTION ORDER SHALL NOT BE CIVILLY OR CRIMINALLY LIABLE PURSUANT TO SECTION 18-6-803.5 (5).

SECTION 6. 13-53-102, Colorado Revised Statutes, is amended to read:

13-53-102. Definition. As used in this article, unless the context otherwise requires:

(1) "Foreign judgment" means any judgment, decree, or order of a court of the United States or of any other court, EXCEPT A PROTECTION ORDER OR A RESTRAINING ORDER AS DESCRIBED IN SECTION 18-6-803.8, C.R.S., ~~which~~ THAT is entitled to full faith and credit in this state.

SECTION 7. 14-11-101, Colorado Revised Statutes, is amended BY THE

ADDITION OF A NEW SUBSECTION to read:

14-11-101. Foreign decrees - how handled. (3) NOTWITHSTANDING THE PROVISIONS OF THIS ARTICLE, A RESTRAINING OR PROTECTION ORDER ISSUED BY A COURT OF ANY STATE, ANY INDIAN TRIBE, OR ANY UNITED STATES TERRITORY SHALL BE ENFORCED PURSUANT TO SECTION 18-6-803.8, C.R.S.

SECTION 8. Effective date - applicability. This act shall take effect July 1, 1998. Section 1 of this act shall apply to offenses committed on or after said date.

SECTION 9. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 1998