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SB-204 Domestic violence: protective orders. (2017-2018)

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Senate Bill No. 204

CHAPTER 98

An act to add Part 6 (commencing with Section 6450) to Division 10 of the Family Code, relating to domestic violence.

[Approved by Governor July 21, 2017. Filed with Secretary of State July 21, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 204, Dodd. Domestic violence: protective orders.

Existing law provides for the issuance and enforcement of protective orders in cases involving domestic violence. Existing law provides for a Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, which authorizes the enforcement of a valid foreign protection order in a tribunal of this state under certain conditions. Existing law establishes a Domestic Violence Restraining Order System for purposes of registering protection orders, as specified, which is administered by the Department of Justice.

This bill would enact the Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act, which would authorize the enforcement of a valid Canadian domestic violence protection order in a tribunal of this state under certain conditions. The bill would prescribe the criteria for a determination of the validity of a protection order under these provisions, as specified, and would authorize the registration of such a protection order in the Domestic Violence Restraining Order System. The bill would require a law enforcement officer of this state to enforce a protection order under these provisions upon determining that there is probable cause to believe that a valid protection order exists and has been violated.

By imposing new duties on law enforcement agencies, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Part 6 (commencing with Section 6450) is added to Division 10 of the Family Code, to read:

PART 6. Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act

6450. This part may be cited as the Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act.

6451. In this part:

(a) “Canadian domestic violence protection order” means a judgment or part of a judgment or order issued in English in a civil proceeding by a court of Canada under law of the issuing jurisdiction that relates to domestic violence and prohibits a respondent from doing any of the following:

- (1) Being in physical proximity to a protected individual or following a protected individual.
- (2) Directly or indirectly contacting or communicating with a protected individual or other individual described in the order.
- (3) Being within a certain distance of a specified place or location associated with a protected individual.
- (4) Molesting, annoying, harassing, or engaging in threatening conduct directed at a protected individual.

(b) “Domestic protection order” means an injunction or other order issued by a tribunal that relates to domestic or family violence laws to prevent an individual from engaging in violent or threatening acts against, harassment of, direct or indirect contact or communication with, or being in physical proximity to, another individual.

(c) “Issuing court” means the court that issues a Canadian domestic violence protection order.

(d) “Law enforcement officer” means an individual authorized by law of this state to enforce a domestic protection order.

(e) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(f) “Protected individual” means an individual protected by a Canadian domestic violence protection order.

(g) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(h) “Respondent” means an individual against whom a Canadian domestic violence protection order is issued.

(i) “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 a federally recognized Indian tribe.

(j) “Tribunal” means a court, agency, or other entity authorized by law to establish, enforce, or modify a domestic protection order.

6452. (a) If a law enforcement officer determines under subdivision (b) or (c) that there is probable cause to believe a valid Canadian domestic violence protection order exists and the order has been violated, the officer shall enforce the terms of the Canadian domestic violence protection order as if the terms were in an order of a tribunal of this state. Presentation to a law enforcement officer of a certified copy of a Canadian domestic violence protection order is not required for enforcement.

(b) Presentation to a law enforcement officer of a record of a Canadian domestic violence protection order that identifies both a protected individual and a respondent and on its face is in effect constitutes probable cause to believe that a valid order exists.

(c) If a record of a Canadian domestic violence protection order is not presented as provided in subdivision (b), a law enforcement officer may consider other information in determining whether there is probable cause to believe that a valid Canadian domestic violence protection order exists.

(d) If a law enforcement officer determines that an otherwise valid Canadian domestic violence protection order cannot be enforced because the respondent has not been notified of or served with the order, the officer shall notify the protected individual that the officer will make reasonable efforts to contact the respondent, consistent with the safety of the protected individual. After notice to the protected individual and consistent with the safety of the individual, the officer shall make a reasonable effort to inform the respondent of the order, notify the respondent of the terms of the order, provide a record of the order, if available, to the respondent, and allow the respondent a reasonable opportunity to comply with the order before the officer enforces the order. Verbal notice of the terms of the order is sufficient for purposes of this subdivision.

(e) If a law enforcement officer determines that an individual is a protected individual, the officer shall inform the individual of available local victim services.

6453. (a) A tribunal of this state may issue an order enforcing or refusing to enforce a Canadian domestic violence protection order on application of any of the following:

(1) A protected party or other person authorized by law of this state other than this part to seek enforcement of a domestic protection order.

(2) A respondent.

(b) In a proceeding under subdivision (a), the tribunal of this state shall follow the procedures of this state for enforcement of a domestic protection order. An order entered under this section is limited to the enforcement of the terms of the Canadian domestic violence protection order as described in subdivision (a) of Section 6451.

(c) A Canadian domestic violence protection order is enforceable under this section if all of the following apply:

(1) The order identifies a protected individual and a respondent.

(2) The order is valid and in effect.

(3) The issuing court had jurisdiction over the parties and the subject matter under law applicable in the issuing court.

(4) The order was issued after either of the following:

(A) The respondent was given reasonable notice and had an opportunity to be heard before the court issued the order.

(B) In the case of an ex parte order, the respondent was given reasonable notice and had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the right of the respondent to due process.

(d) A Canadian domestic violence protection order valid on its face is prima facie evidence of its enforceability under this section.

(e) A claim that a Canadian domestic violence protection order does not comply with subdivision (c) is an affirmative defense in a proceeding seeking enforcement of the order. If the tribunal of this state determines that the order is not enforceable, the tribunal of this state shall issue an order that the Canadian domestic violence protection order is not enforceable under this section and Section 6452 and may not be registered under Section 6454.

(f) This section applies to enforcement of a provision of a Canadian domestic violence protection order against a party to the order in which each party is a protected individual and respondent only if both of the following apply:

(1) The party seeking enforcement of the order filed a pleading requesting the order from the issuing court.

(2) The court made detailed findings of fact indicating that both parties acted as a primary aggressor and that neither party acted primarily in self-defense.

6454. (a) An individual may register a Canadian domestic violence protection order in this state. To register the order, the individual must present a certified copy of the order to a court of this state to be entered into the Domestic Violence Restraining Order System established under Section 6380, pursuant to procedures set forth in Section 6404.

(b) A fee may not be charged for the registration of a Canadian domestic violence protection order under this section.

(c) Registration in this state or filing under law of this state other than this part of a Canadian domestic violence protection order is not required for its enforcement under this part.

6455. (a) There shall be no civil liability on the part of, and no cause of action for false arrest or false imprisonment against, a law enforcement officer who makes an arrest pursuant to a Canadian domestic violence protection order that is regular upon its face, if the law enforcement officer, in making the arrest, acts in good faith and has reasonable cause to believe that the person against whom the order is issued has notice of the order and has committed an act in violation of the order.

(b) Nothing in this section shall be deemed to exonerate a law enforcement officer from liability for the unreasonable use of force in the enforcement of the order. The immunities afforded by this section shall not affect the availability of any other immunity that may apply, including, but not limited to, Sections 820.2 and 820.4 of the Government Code.

6456. An individual who seeks a remedy under this part may seek other legal or equitable remedies.

6457. If there is more than one order issued and one of the orders is an emergency protective order that has precedence in enforcement pursuant to paragraph (1) of subdivision (c) of Section 136.2 of the Penal Code, the law enforcement officer shall enforce the emergency protective order. If there is more than one order issued, none of the orders issued is an emergency protective order that has precedence in enforcement, and one of the orders issued is a no-contact order, as described in Section 6320, the law enforcement officer shall enforce the no-contact order. If there is more than one civil order regarding the same

parties and neither an emergency protective order that has precedence in enforcement nor a no-contact order has been issued, the law enforcement officer shall enforce the order that was issued last. If there are both civil and criminal orders regarding the same parties and neither an emergency protective order that has precedence in enforcement nor a no-contact order has been issued, the law enforcement officer shall enforce the criminal order issued last.

6458. This part modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001 et seq.), but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Sec. 7001(c)), or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Sec. 7003(b)).

6459. This part applies to a Canadian domestic violence protection order issued before, on, or after January 1, 2018, and to a continuing action for enforcement of a Canadian domestic violence protection order commenced before, on, or after January 1, 2018. A request for enforcement of a Canadian domestic violence protection order made on or after January 1, 2018, for a violation of the order occurring before, on, or after January 1, 2018, is governed by this part.

6460. If any provision of this part or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this part that can be given effect without the invalid provision or application, and to this end the provisions of this part are severable.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.