

HSB 595

JUDICIARY
Suggested by
CF/HF 2407

Savis, Chair
Thomson
Dodner

SENATE/HOUSE FILE _____
BY (PROPOSED ATTORNEY GENERAL
BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to domestic violence protective orders.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 236.10, Code 1999, is amended to read
2 as follows:

3 236.10 CONFIDENTIALITY OF RECORDS.

4 1. The entire file or a portion of the file in a domestic
5 abuse case shall be sealed by the clerk of court ~~when it is~~
6 ~~complete and after the time for appeal has expired~~ as ordered
7 by the court to protect the privacy interest or safety of any
8 person. However, the clerk shall open the file upon
9 ~~application to and order of the court for good cause shown or~~
10 ~~upon request of the child support recovery unit. Support~~
11 ~~payment records, whether maintained by the clerk of the~~
12 ~~district court or the department of human services, are public~~
13 ~~records and may be released upon request. However, a payment~~
14 ~~record shall not include address or location information.~~

15 2. Notwithstanding subsection 1, court orders and support
16 payment records shall remain public records, although the
17 court may order that certain information be redacted from the
18 public records, such as address or location information.

19 Sec. 2. Section 236.19, Code Supplement 1999, is amended
20 to read as follows:

21 236.19 FOREIGN PROTECTIVE ORDERS -- REGISTRATION --
22 ENFORCEMENT.

23 1. As used in this section, "foreign protective order"
24 means a protective order entered ~~in a state other than Iowa~~
25 which by a court of another state, Indian tribe, or United
26 States territory that would be an order or court-approved
27 consent agreement entered under this chapter, a temporary or
28 permanent protective order or order to vacate the homestead
29 under chapter 598, or an order that establishes conditions of
30 release or is a protective order or sentencing order in a
31 criminal prosecution arising from a domestic abuse assault if
32 it had been entered in Iowa.

33 2. A certified or authenticated copy of a permanent
34 foreign protective order ~~authenticated in accordance with the~~
35 ~~statutes of this state~~ may be filed with the clerk of the

1 district court in any county that would have venue if the
2 original action was being commenced in this state or in which
3 the person in whose favor the order was entered may be
4 present.

5 a. The clerk shall file foreign protective orders that are
6 not certified or authenticated, if supported by an affidavit
7 of a person with personal knowledge, subject to the penalties
8 for perjury. The person protected by the order may provide
9 this affidavit.

10 b. The clerk shall provide copies of the order as required
11 by section 236.5, except that notice shall not be provided to
12 the respondent without the express written direction of the
13 person in whose favor the order was entered.

14 3. a. A valid foreign protective order so-filed has the
15 same effect and shall be enforced in the same manner as a
16 protective order issued in this state whether or not filed
17 with a clerk of court or otherwise placed in a registry of
18 protective orders.

19 b. A foreign protective order is valid if it meets all of
20 the following:

21 (1) The order states the name of the protected individual
22 and the individual against whom enforcement is sought.

23 (2) The order has not expired.

24 (3) The order was issued by a court or tribunal that had
25 jurisdiction over the parties and subject matter under the law
26 of the foreign jurisdiction.

27 (4) The order was issued in accordance with respondent's
28 due process rights, either after the respondent was provided
29 with reasonable notice and an opportunity to be heard before
30 the court or tribunal that issued the order, or in the case of
31 an ex parte order, the respondent was granted notice and
32 opportunity to be heard within a reasonable time after the
33 order was issued.

34 c. Proof that a foreign protective order failed to meet
all of the factors listed in paragraph "b" shall be an

1 affirmative defense in any action seeking enforcement of the
2 order.

3 4. A peace officer shall treat a foreign protective order
4 as a valid legal document and shall make an arrest for a
5 violation of the foreign protective order in the same manner
6 that a peace officer would make an arrest for a violation of a
7 protective order issued within this state.

8 a. The fact that a foreign protective order has not been
9 filed with the clerk of court or otherwise placed in a
10 registry shall not be grounds to refuse to enforce the terms
11 of the order unless it is apparent to the officer that the
12 order is invalid on its face.

13 b. A peace officer acting in good faith in connection with
14 the enforcement of a foreign protective order shall be immune
15 from civil and criminal liability in any action arising in
16 connection with such enforcement.

17 5. Filing and service costs in connection with foreign
18 protective orders may be waived or deferred as provided in
19 section 236.3.

20 EXPLANATION

21 This bill makes amendments related to domestic abuse
22 protective orders under Code chapter 236.

23 Code section 236.10 is amended to provide for the court to
24 order the sealing of a domestic abuse file or portion of the
25 file as necessary to protect the privacy or safety of any
26 person, rather than automatic sealing of the entire file by
27 the clerk of court.

28 Code section 236.19, relating to foreign protective orders,
29 is amended to specify inclusion of protective orders issued by
30 Indian tribunals and courts in United States territories, to
31 expand venue to include any county that would have venue if
32 the action were being commenced in Iowa, to include filing of
33 certified copies of foreign protective orders, and to allow
34 filing of orders that are not certified or authenticated if
35 supported by an affidavit, subject to penalties of perjury, of

1 a person with personal knowledge, which may be the person
2 protected by the order. Code section 236.19 is also amended
3 to prohibit service of copies of the order to a respondent
4 unless expressly directed by the person in whose favor the
5 order is entered.

6 Code section 236.19 is also amended to specify that a valid
7 foreign protective order shall be enforced in this state even
8 if not filed with a clerk of court or placed in a registry of
9 protective orders unless a peace officer finds the order
10 invalid on its face. The section lists criteria required for
11 a valid order and provides that failure to meet all criteria
12 provides an affirmative defense in an action for enforcement.
13 A peace officer is granted civil and criminal immunity for
14 enforcement actions under this section.

15 Code section 236.19 is also amended to provide that filing
16 and service costs related to foreign protective orders may be
17 waived or deferred as provided in Code section 236.3.

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HSB 595



Department of Justice

THOMAS J. MILLER
ATTORNEY GENERAL

ADDRESS REPLY TO:
HOOVER BUILDING
DES MOINES, IOWA 50319
TELEPHONE: 515-281-5164
FACSIMILE: 515-281-4209

MEMORANDUM

TO: Members of the General Assembly
FROM: Anne Bunz, Legislative Liaison
DATE: January 10, 2000
SUBJECT: Domestic Abuse Protective Orders

The Iowa Attorney General is submitting a bill request for legislation dealing with domestic violence protective orders. There are three parts to this bill. Part one refers to the filing of fees and service costs of protective orders. Part two refers to the sealing of records. Part three refers to foreign protective orders.

Part One:

Currently, filing fees and service costs are deferred when a person seeking relief from domestic abuse files an affidavit of indigency. In-state service has generally not been a problem because Iowa County sheriffs have been serving domestic abuse petitions and orders without seeking advance fees. Some out-of-state sheriffs, however, have demanded advance fees before they will serve Iowa petitions or protective orders.

This proposal clarifies the statute in order to avoid delays in service or improper requests that costs be advanced by Iowa plaintiffs. The suggested amendment places responsibility for advancing service costs on the county in which the action is pending. There is precedence for this in this particular chapter of the Iowa Code. ("Costs of counseling shall be paid in full or in part by the parties and taxed as court costs. If the court determines that the parties are unable to pay the costs, they may be paid in full or in part from the county treasury.") Iowa Code section 236.5(1).

Part Two:

The law requires clerks of court to seal the entire file when the file is complete and "after the time for appeal has expired." However, the time period under which the file must be sealed is not always clear in practice. Law enforcement personnel and prosecutors have encountered difficulty securing copies of needed court orders in domestic abuse files. This proposal deletes the mandatory sealing requirement, but allows the court to seal all or parts of the file to protect privacy interests or safety of any person.

Part Three:

Foreign domestic abuse protective orders are entitled to full faith and credit in Iowa courts pursuant to the United States Constitution, and federal and state statutes.

Iowa Code section 236.19 was initially enacted to implement recommendations by a state judicial task force on domestic violence. As the task force concluded:

"No sound public policy reason exists for protecting the survivor only in the state in which she obtained the order. Future violence ought to be constrained in any state in which the victim is located."

While current law mandates full faith and credit, a series of practical issues have arisen which require legislative response. Courts and law enforcement officials around Iowa have not uniformly addressed the issues. Consistent statewide practices are essential so all domestic abuse survivors, including those fleeing from other states, receive the same protection in every Iowa county.

Part three of this proposal makes a variety of changes that deal with the definition of foreign protective order, venue, authentication, notice to respondent, elements of a valid order, and deferral of costs.

3/21/00 Removed from Calendar

FEB 23 2000

Place On Calendar

HOUSE FILE 2407
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 595)

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