

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING**

January 29, 2016

1:04 p.m.

MEMBERS PRESENT

Representative Gabrielle LeDoux, Chair
Representative Bob Lynn
Representative Matt Claman
Representative Max Gruenberg

MEMBERS ABSENT

Representative Wes Keller, Vice Chair
Representative Neal Foster
Representative Charisse Millett
Representative Kurt Olson (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 221

"An Act relating to protective orders."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 221

SHORT TITLE: ENFORCEMENT OF FOREIGN PROTECTIVE ORDERS

SPONSOR(S): REPRESENTATIVE(S) EDGMON

01/19/16	(H)	PREFILE RELEASED 1/8/16
01/19/16	(H)	READ THE FIRST TIME - REFERRALS
01/19/16	(H)	JUD
01/29/16	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

REPRESENTATIVE BRYCE EDGMON

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented HB 221 as prime sponsor.

TIMOTHY CLARK, Staff

Representative Bryce Edgmon

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Discussed provisions contained within HB 221.

MARY LUNDQUIST, Senior Assistant Attorney General
Opinions, Appeals & Ethics Section
Office of the Attorney General
Department of Law (DOL)
Fairbanks, Alaska

POSITION STATEMENT: Answered questions regarding HB 221.

JOHN SKIDMORE, Division Director
Legal Services Section
Criminal Division
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: Answered questions regarding HB 221.

ACTION NARRATIVE

[1:04:20 PM](#)

CHAIR GABRIELLE LEDOUX called the House Judiciary Standing Committee meeting to order at 1:04 p.m. Representatives Gruenberg, Lynn, Claman and LeDoux were present at the call to order.

HB 221-ENFORCEMENT OF FOREIGN PROTECTIVE ORDERS

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CO-CHAIR LEDOUX announced that the only order of business would be HOUSE BILL NO. 221, "An Act relating to protective orders."

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REPRESENTATIVE BRYCE EDGMON, Alaska State Legislature, explained that the bill is essentially a technical fix in its application. He point out that he is an Alaska Native, born and raised in Rural Alaska, and has had the opportunity as a legislator to work directly with the criminal justice agencies overseeing the Department of Corrections (DOC) and the Department of Public Safety (DPS). The role of tribal courts is growing, he opined, in terms of providing justice and other services out in the "local" areas. Last year two resolutions passed from this committee with tribal attached to them and, he explained, the

purpose of HB 221 is to allow tribal court to take an additional step under Alaska law to increase its duties. He extended that he is a strong proponent of the tribal courts that the Alaska State Constitution permits.

CHAIR LEDOUX asked what tribal courts in Alaska might be able to issue the orders under this bill.

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TIMOTHY CLARK, Staff, Representative Bryce Edgmon, Alaska State Legislature, answered that over the years tribes have demonstrated strong institutions and capacity, including the Tanana Chiefs Conference in the Interior, the Central Council Tlingit & Haida Indian Tribes of Alaska in the Southeast, and others in several locations around Alaska. He opined that the Department of Law (DOL) has been in close contact with tribal courts in recent years, and that DOL attorneys may add to his response.

MR. CLARK offered that the bill relates to the removal of the "Alaska Exemption" to The Violence Against Women Act of 1994 (VAWA), that was repealed in 2014 due a bill sponsored by Senators Lisa Murkowski and then Senator Begich. He said it brought attention to the state's obligation to enforce protection orders from other jurisdictions including other state, territorial, and tribal courts. Under Alaska statute, law enforcement is only compelled to enforce a tribal, or other states, protection order when that order has first been filed with a clerk of an Alaska court. However, he noted, with Alaska now subject to VAWA, the federal law supersedes state law and a protection order issued by a foreign jurisdiction (other states, territory, or tribal court) no longer must be registered in an Alaskan court before enforcement. He advised that in July 2015, Attorney General Craig Richards at the behest of Commissioner Gary Folger, Department of Public Safety, issued an opinion on this subject discussing the state now being subject to the federal law. Within that opinion, Attorney General Richards recommended in two places that the state reconcile its statutes with the now prevailing federal law obligation. Essentially, he explained, HB 221 follows the attorney general's recommendations for compliance that is hoped to clarify the duties of state law enforcement by removing these conflicts, and lowering the risk of potential lawsuits. In addition, he stated, HB 221 adds a presumption of validity on the part of law enforcement so they are encouraged to enforce a protective order issued by another jurisdiction so long as it appears authentic on its face. He

described that provision as an error on the side of caution and that presumption of validity does exist in other states addressing these matters. He continued that Legislative Legal and Research Services agreed that in no location was it stated very clearly or all in one place what defines other jurisdictions. He pointed out that this bill clearly states that the other jurisdictions include another state, territory, United States Military Tribunals, and tribal courts.

MR. CLARK, in response to Chair LeDoux, answered that HB 221 does not include foreign judgements. He related that as Attorney General Richards emphasized in his opinion, "it gives officers access to tribal and foreign protection orders anywhere in Alaska, even if the victim does not have a copy of the order at hand." Therefore, he said, the state continues to encourage people to file protection orders with a clerk of an Alaska court who then sends it to a central registry.

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UNIDENTIFIED SPEAKER in audience.

[1:16:22 PM](#)

MR. CLARK, in response to Chair LeDoux, stated that he is unaware of anyone from the general public planning to testify. He offered that Representative Gruenberg direct his questions to him as he may be able to provide an answer if the Department of Law (DOL) is unavailable.

REPRESENTATIVE GRUENBERG said he would prefer an attorney.

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REPRESENTATIVE CLAMAN asked whether Mr. Clark had received comments from any of the tribes or Native organizations.

MR. CLARK answer no.

REPRESENTATIVE CLAMAN questioned whether any comments had been received from individuals objecting to this change.

MR. CLARK responded no.

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UNIDENTIFIED SPEAKER in audience.

1:20:00 PM

REPRESENTATIVE GRUENBERG noted that the attorney general suggests that the legislature amend conflicting statutes to bring Alaska into compliance with VAWA, as most legislatures have done. He asked whether there is anything within that statement the department wants to bring into compliance with VAWA that is not contained in the bill.

MR. CLARK answered that months ago he provided this version of the bill to DOL, who performed a thorough evaluation, and its response was that it had no problem with the bill.

REPRESENTATIVE GRUENBERG asked John Skidmore or Mary Lundquist whether there is anything the department now feels should, or should not, be included in the bill.

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MARY LUNDQUIST, Senior Assistant Attorney General, Opinions, Appeals & Ethics Section, Office of the Attorney General, Department of Law (DOL), answered that she is unaware of anything in VAWA that would require other changes to state statute.

REPRESENTATIVE GRUENBERG asked whether there is anything in the bill that should not be included.

MS. LUNDQUIST opined that there is nothing in the bill that should not be included to bring Alaska into compliance with VAWA.

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REPRESENTATIVE GRUENBERG asked that Ms. Lundquist provide a list of tribal courts that could try cases subject to full faith and credit under this bill.

MS. LUNDQUIST offered that the list of tribes able to issue protective orders under this bill would be all federally recognized tribes in the State of Alaska. She advised that a new list on the federal register was issued and she could provide the list to the committee, if so desired. She stated there are 229 tribes in the State of Alaska and whether each of those tribes issue protective orders, or not, is another

question because there are various degrees of sophistication amongst the tribes.

REPRESENTATIVE GRUENBERG asked Ms. Lundquist to send the list of 229 tribes to the committee.

MS. LUNDQUIST agreed.

REPRESENTATIVE GRUENBERG asked whether DOL will receive, as tribes assume this responsibility, an indication from individual tribes that they are taking on this responsibility.

MS. LUNDQUIST opined that DOL will not be separately notified as the tribes have been issuing protective orders for many years and the state recognizes those orders. She said there will not be any special notification provisions when a tribe decides to issue protective orders, or even if it has issued a protective order.

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REPRESENTATIVE GRUENBERG asked whether, currently, there is a mechanism requiring tribes assuming this responsibility to notify the State of Alaska so the state is aware in order to assure this is not a fraud.

MS. LUNDQUIST replied that, currently, there is no mechanism by which a tribe would notify the state that it is exercising its authority to issue tribal protection orders. She offered that the tribe would be issuing protective orders under its inherent jurisdiction.

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CHAIR LEDOUX asked Representative Gruenberg where he is going with this line of questions.

REPRESENTATIVE GRUENBERG said he is exploring whether there should be some mechanism to require the tribes to notify that they are undertaking this jurisdiction.

CHAIR LEDOUX asked whether this includes other tribes outside of Alaska.

MR. CLARK answered "Yes it does."

CHAIR LEDOUX questioned whether, conceivably, there could even be a mechanism for every tribe in the United States to notify the State of Alaska that it might at some point in the future issue protective orders.

MR. CLARK stated that such a requirement would be counter-productive to the provision in the Violence Against Women Act (VAWA) that is meant to stream-line the ability of tribes and other jurisdictions to have its protection orders enforced. He pointed out that HB 221 eliminates the current statute step of the requirement that protective orders be filed in a state court. The idea, he emphasized, is that an individual facing danger from a person against whom they had a protective order could receive more immediate law enforcement support.

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REPRESENTATIVE GRUENBERG said that other state courts have the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), and federally the Parental Kidnapping Prevention Act (PKPA). He explained that normally a child must be in the State of Alaska for six months before the court can entertain anything concerning its jurisdiction, with an exception being an emergency situation for the protection of the child. He asked about the interplay between that body of state and federal law and HB 221, because there is a narrow exception permitted of the above-statutes. He expressed concern regarding someone bringing a child into Alaska and moving into a tribal jurisdiction, and thereby evading the normal requirements of the other state law.

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MS. LUNDQUIST advised that she is not intimately familiar with UCCJEA or PKPA. She surmised that Representative Gruenberg's concern was about taking a child into a jurisdiction in which a tribe could issue a protective order. She advised that the protective orders issued by tribes in Alaska "would be ... by the tribe and whether it involved a tribal member that held a subject matter jurisdiction of the tribe would be determined."

CHAIR LEDOUX reiterated to Representative Gruenberg that she does not understand his line of questioning in that all HB 221 does is remove the requirement that the protective order be filed [with a state court], and stressed that she does not see how his questioning is germane to this particular bill.

REPRESENTATIVE GRUENBERG said that he wants to be sure that this cannot be used as an "end run" over the other jurisdictional requirements of the law.

CHAIR LEDOUX reiterated that she does not see how taking out the word "filing" changes things.

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REPRESENTATIVE CLAMAN asked whether there is anything in federal law requiring a tribe to register with the federal government or provide notice that it has established a tribal court and the tribal court is now issuing [protective] orders relating to the Violence Against Women Act (VAWA).

MS. LUNDQUIST opined there is nothing in VAWA requiring a tribe to give prior notice to the federal government that it will exercise its inherent authority to issue protective orders. Under VAWA, 18 USC 2265(e) which read as follows:

(e) Tribal Court Jurisdiction.—

For purposes of this section, a court of an Indian tribe shall have full civil jurisdiction to issue and enforce protection orders involving any person, including the authority to enforce any orders through civil contempt proceedings, to exclude violators from Indian land, and to use other appropriate mechanisms, in matters arising anywhere in the Indian country of the Indian tribe (as defined in section 1151) or otherwise within the authority of the Indian tribe.

MS. LUNDQUIST explained that the law recognizes broad jurisdiction on behalf of the tribes to issue protective orders in that tribes have full civil jurisdiction to issue and enforce protective orders involving any person.

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REPRESENTATIVE CLAMAN surmised that the only requirement of a tribe is to be federally recognized, and that there is a means by which the federal government or U.S. Department of Interior recognizes tribes. He further surmised that once a tribe is federally recognized, the tribe has inherent power that it may, or may not, exercise.

MS. LUNDQUIST answered that Representative Claman is correct in that if the tribe is federally recognized it holds inherent

jurisdiction. She pointed out that the U.S. Supreme Court federal case law recognizes tribal jurisdiction over tribal lands and tribal members. In the event there was one person who was a member of the tribe that was subject to the protective order, she opined, the tribe would have inherent jurisdiction over that.

REPRESENTATIVE CLAMAN pointed out that federal tribal recognition doesn't require a tribe to give notice it is issuing orders to the federal government. He questioned whether there would be a conflict between a state law requiring such notice and federal law that doesn't.

MS. LUNDQUIST opined that it would be somewhat inconsistent to require prior notice by the tribe, and noted that it runs counter to the intent of VAWA to remove restraints on issuance of tribal protection orders, and even foreign orders in having those foreign orders recognized in other states.

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REPRESENTATIVE GRUENBERG said that this uses the term "protective order" loosely. Under AS 18, Alaska Domestic Violence and Sexual Assault orders are specifically defined and opined that six months can be extended to 12 months. He stated he does not see anything here that is similarly definitional as to what a tribal protection order is, and that he could conceivably see a system where a protective order could be permanent. He asked what is there that defines what a tribal order might be.

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JOHN SKIDMORE, Division Director, Legal Services Section, Criminal Division, Department of Law (DOL), explained the answer to the question is found within VAWA where it defines a protective order and it contemplates the precise notion Representative Gruenberg asked about. He said there could be a permanent and lifetime protective order, and with regard to what the protective order says, the law controlling it is the jurisdiction issuing it. For example, he offered, should the State of Washington have a lifetime protective order it would be in existence for that person's lifetime. The way it works in Alaska, he explained, is that Alaska is the enforcing state and Alaska looks at whether there is a crime on its books for a violation of that order and the answer is yes. He noted that Alaska does not care what Washington says about the length of

the protective order, Alaska enforces it as Washington says that it is a valid order. However, Alaska does analyze whether "that" is a crime in Alaska. He referred back to the question regarding custody, and advised that Alaska does not have violations of protective orders based on child custody, which are the other two federal acts Representative Gruenberg referred to. He explained that Alaska is only interested in contact, threats, or whether or not a person has weapons because those are the violations of protective orders Alaska enforces - nothing to do with child custody.

REPRESENTATIVE GRUENBERG surmised that the only portions of the protective order Alaska enforces are injunctive and not custodial.

MR. SKIDMORE answered yes, under Alaska criminal law the state enforces the injunctive. He then pointed out that the custodial is enforced under Alaska law, but [custodial] is not an enforced criminal charge as enforcing a protective order. He said there are other statutes Alaska looks at for child custody, but those are not the statutes implicated by the charge of violating a protective order.

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REPRESENTATIVE GRUENBERG asked whether HB 221 will limit it to criminal enforcement or also govern civil enforcement.

MR. SKIDMORE responded that both types of enforcement would be available.

REPRESENTATIVE GRUENBERG said his question is related to civil enforcement.

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MS. LINDQUIST replied that she is in the civil division of the Attorney General's office, and asked to have the question repeated.

REPRESENTATIVE GRUENBERG stated his question, from a civil custodial point of view in seeking a civil enforcement of a domestic violence protective order enforced in a tribal court. He offered a scenario of the State of Idaho issuing a five year protective order adjudicating custody of the child that remains on the books and effective for five years. In that Alaska's order is normally six to 12 months, he asked whether HB 221

would require the Alaska court, tribal or otherwise, to extend that child custody protective order for the period of Idaho's five years rather than Alaska's six to twelve months.

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MS. LUNDQUIST advised she is not familiar with child custody laws and does not know the answer to that question.

CHAIR LEDOUX asked whether Representative Gruenberg's question goes to this bill or simply to current law. She stressed that the discussion in this committee should only relate to the changes to the law promulgated in this specific bill and not to general questions with respect to the law of restraining orders, protective orders, etcetera. She asked Ms. Lundquist or Mr. Skidmore to answer the question.

MS. LUNDQUIST responded that VAWA has preempted certain provisions of state law and HB 221 is designed to bring state law into conformance with VAWA. She agreed with Chair LeDoux that the questions regarding any interplay between child custody orders and protective orders are a bit astray. She advised that if there is a conflict, it currently exists and this bill won't have any effect on that.

CHAIR LEDOUX, in response to Representative Gruenberg's request to continue, asked whether his follow up question relates to the changes in the law from this bill.

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REPRESENTATIVE GRUENBERG referred to page 4, lines 16-17, which read as follows:

(1) issued by a court of the United States, a court of another state or territory, a United States military tribune, or a tribal court;

REPRESENTATIVE GRUENBERG said it discusses the petition filed in divorce or dissolution statutes under AS 25.24.200, which is not particularly dealing with state custody under Title 47, or criminal law under Title 11. He said, "It changes that the dissolution statute must consider a protective order filed in another jurisdiction and recognized in this state." He explained that it has to be recognized and that it draws in these jurisdictional issues, and it is the same in Sec. 9. He further explained that with his line of questioning he would

like to ascertain the effect this has in the adjudication of dissolution cases. It very definitely is civil and these are private custody disputes, he said.

REPRESENTATIVE GRUENBERG opined that the 7/30/15 letter from Attorney General Craig Richards to Commissioner Gary Folger is at the heart of what the committee is discussing. He then asked about the "Alaska Exemption" and whether it was from federal law.

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MR. CLARK advised that the Alaska Exemption is an exemption from Chapter 2265 of the Violence Against Women Act (VAWA). He explained that it removes the requirement that a protection order from another jurisdiction is no longer required to be filed in Alaska state court in order to be enforced.

REPRESENTATIVE GRUENBERG surmised that the exemption existed and then it was done away with the exemption to require it to be filed.

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MR. CLARK explained that it is just the opposite. He said that by doing away with the Alaska Exemption from Chapter 2265 of the Violence Against Women Act, Alaska can no longer require that a protection order from another jurisdiction is filed with a state court clerk before state law enforcement is compelled to enforce that protection order.

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CHAIR LEDOUX commented that this line of questioning is totally beyond the discussion of this bill.

REPRESENTATIVE GRUENBERG referred to Mr. Clark's comment that it only applies to other states and not to foreign custody orders, such as Canada. He asked where it is so limiting that the orders this relates to are only domestic foreign orders.

MR. CLARK advised that Attorney General Richards and he have been using "foreign jurisdictions" as a term of art, and not being an attorney he may be in error.

CHAIR LEDOUX expressed that his question seems to apply to the entirety of the statute, and HB 221 is simply eliminating the

phrase "filed." She stressed that the statute currently exists and further stressed that he limit his questions to the changes made by eliminating the requirement for the filing of the protective order.

REPRESENTATIVE GRUENBERG responded that he understands, and asked where it says this only applies to protective orders from another state or territory of the United States, and wouldn't apply to a foreign order from Morocco.

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MR. SKIDMORE pointed out that the language is located in Section 2 of HB 221, page 2, lines 2-4, which read:

(c) In this section, "protective order" means an order issued, [OR] filed, or recognized under AS 13.26.207 - 13.26.209, AS 18.65.850 - 18.65.870, or AS 18.66.100 - 18.66.180.

MR. SKIDMORE advised that the Alaska Statutes discuss only protective orders filed within the United States and not from a foreign county.

CHAIR LEDOUX opened public testimony and after ascertaining no one wished to testify, closed public testimony.

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The committee took a brief at ease.

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REPRESENTATIVE GRUENBERG referred to AS 13.26.207 - 13.26.209 and commented that he did not see anything that "limits it like that" and wanted it on the record. He commented that he has no reason to dispute Mr. Skidmore, but he could not find it at this point.

CHAIR LEDOUX reiterated that HB 221 is only changing the requirement of filing. She opined that Representative Gruenberg was interested in a discussion regarding the whole idea of who honors protective orders, from which jurisdictions, and when, which does not relate to the subject of this particular bill.

CHAIR LEDOUX advised that HB 221 would be held in committee.

REPRESENTATIVE GRUENBERG noted his question is that the intent of the bill ...

CHAIR LEDOUX reiterated that the bill is held in committee.

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ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 1:54 p.m.