

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

February 8, 2017

2:36 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Zach Fansler, Vice Chair
Representative Jonathan Kreiss-Tomkins
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold

MEMBERS ABSENT

Representative Charisse Millett (alternate)
Representative Louise Stutes (alternate)

COMMITTEE CALENDAR

HOUSE CONCURRENT RESOLUTION NO. 1

Proposing an amendment to the Uniform Rules of the Alaska State Legislature relating to voting and abstention from voting.

- RESCINDED ACTION OF 2/3/17; MOVED HCR 1
OUT OF COMMITTEE

HOUSE BILL NO. 8

"An Act relating to protective orders."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HCR 1

SHORT TITLE: AMEND UNIFORM RULES: ABSTAIN FROM VOTING

SPONSOR(S): REPRESENTATIVE(S) GRENN

01/20/17	(H)	READ THE FIRST TIME - REFERRALS
01/20/17	(H)	STA, JUD
01/20/17	(H)	JUD REFERRAL REMOVED
01/20/17	(H)	JUD REFERRAL ADDED BEFORE STA
01/25/17	(H)	JUD AT 1:00 PM GRUENBERG 120
01/25/17	(H)	-- Meeting Postponed to 1/27/17 --
01/27/17	(H)	JUD AT 1:00 PM GRUENBERG 120

01/27/17 (H) -- Meeting Rescheduled from 1/25/17 --
01/30/17 (H) JUD AT 1:30 PM GRUENBERG 120
01/30/17 (H) Heard & Held
01/30/17 (H) MINUTE (JUD)
02/03/17 (H) JUD AT 1:30 PM GRUENBERG 120
02/03/17 (H) Moved HCR 1 Out of Committee
02/03/17 (H) MINUTE (JUD)
02/08/17 (H) JUD AT 1:30 PM GRUENBERG 120

BILL: HB 8

SHORT TITLE: ENFORCEMENT OF FOREIGN PROTECTIVE ORDERS

SPONSOR(S): REPRESENTATIVE(S) EDGMON

01/18/17 (H) PREFILE RELEASED 1/9/17
01/18/17 (H) READ THE FIRST TIME - REFERRALS
01/18/17 (H) CRA, JUD
01/31/17 (H) CRA AT 8:00 AM BARNES 124
01/31/17 (H) Moved HB 8 Out of Committee
01/31/17 (H) MINUTE (CRA)
02/01/17 (H) CRA RPT 5DP 1NR
02/01/17 (H) DP: TALERICO, WESTLAKE, DRUMMOND,
PARISH, FANSLER
02/01/17 (H) NR: RAUSCHER
02/08/17 (H) JUD AT 1:30 PM GRUENBERG 120

WITNESS REGISTER

TIM CLARK, Staff
Representative Brice Edgmon
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 8, on behalf of Representative Edgmon, prime sponsor.

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

POSITION STATEMENT: During the hearing of HB 8, answered questions.

ACTION NARRATIVE

[2:36:07 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 2:36 p.m. Representatives Fansler, Kreiss-Tomkins, Kopp, Reinbold, and Claman were present at the call to order. Representatives Eastman and LeDoux arrived as the meeting was in progress.

CHAIR CLAMAN announced that Representative Charisse Millett was appointed to the House Judiciary Standing Committee as second alternate by the Committee on Committees.

HCR 1-AMEND UNIFORM RULES: ABSTAIN FROM VOTING

[2:38:14 PM](#)

CHAIR CLAMAN announced that the first order of business would be HOUSE CONCURRENT RESOLUTION NO. 1, Proposing an amendment to the Uniform Rules of the Alaska State Legislature relating to voting and abstention from voting.

CHAIR CLAMAN explained that the committee moved HCR 1 out of committee on 2/3/17 without the necessary fiscal note. The sponsor provided the fiscal note before the members, he said.

[2:38:47 PM](#)

REPRESENTATIVE FANSLER moved to rescind the committee's action on 2/3/17 of reporting HCR 1, Version 30-LS0209\J, from committee. There being no objection, it was so ordered.

[2:39:07 PM](#)

REPRESENTATIVE FANSLER moved to adopt fiscal note HCR1-LEG-SESS-02-06-17 for HCR 1, and attach the fiscal note to HCR 1. There being no objection, it was so ordered.

[2:39:45 PM](#)

REPRESENTATIVE FANSLER moved to report HCR 1, Version 30-LS0209\J, out of committee with individual recommendations and the accompanying zero fiscal note.

REPRESENTATIVE REINBOLD objected. Representative Reinbold stated she wanted to put on the record that "the committee accidentally did the amendment to the wrong bill - it was to HCR 1. Therefore, she explained, "instead of the majority, it was two-thirds of the majority of the full house ... the amendment

that was done to the conflict of interest bill instead of HCR 1 that amendment was supposed to be on HCR 1."

[2/3/17, Representative Reinbold moved to adopt Amendment [3], which was the only amendment offered on HCR 1, and it failed to pass by a vote of 3-4.]

REPRESENTATIVE REINBOLD advised that she did not object to the fiscal note, and removed her objection.

[2:40:56 PM](#)

CHAIR CLAMAN stated that there being no objection, HCR 1 was moved from the House Judiciary Standing Committee.

HB 8-ENFORCEMENT OF FOREIGN PROTECTIVE ORDERS

[2:41:29 PM](#)

CHAIR CLAMAN announced that the final order of business would be HOUSE BILL NO. 8, "An Act relating to protective orders."

[2:42:01 PM](#)

TIM CLARK, Staff, Representative Brice Edgmon, Alaska State Legislature, explained that HB 8 will align Alaska Statutes with federal law, which supersede some existing contradictions. In 2014, the elimination of what was known as the Alaska Exemption from the Federal Violence Against Women Act brought attention to the state's obligation to enforce protective orders from other jurisdictions, including other states, territories, or tribal courts. Under existing statutes, law enforcement is compelled to enforce another jurisdiction's protective order if filed with a clerk of an Alaska court. However, he advised, with Alaska now subject to the Violence Against Women Act (VAWA), the filing of those protective orders is not necessary for enforcement. This legislation follows the recommendation of the Department of Law (DOL) to amend conflicting statutes and bring Alaska into compliance with federal law. He pointed out that it will not only clarify the duties of state law enforcement, but also will eliminate potential lawsuits that could stem from the contradictions currently in statute, and possible complications in prosecution. He explained that HB 8 adds a presumption of validity for law enforcement by encouraging enforcement of a protective order, issued in another jurisdiction, so long as it appears authentic on its face. He commented that it could be

construed as erroring on the side of caution when it comes to a situation of someone possibly in danger. The bill more clearly specifies in statute that other jurisdictions include: courts of another state, territories, United States military tribunals, and tribal courts. Although, he explained, the Department of Law (DOL) continues to encourage registration of protective orders from other jurisdictions. "The Attorney General noted in his opinion," that the state's central registry gives officers access to tribal and foreign protective orders anywhere in Alaska, even if the victim does not have a copy of the order at hand, he stated.

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REPRESENTATIVE KOPP asked whether there is anything in the bill dealing with child custody orders, or whether it solely addresses domestic violence protective orders.

MR. CLARK responded that bill's various sections go into almost all relevant parts of state law where the current or previous existence of a protective order could bear on decision making. For example, he opined, Sec. 4 of the bill relates to the requirements of the Alaska Child Fatality Review Team [AS 12.65.120], to review the death of a child and consider whether anyone in the child's immediate household was a petitioner or respondent to a protective order within the previous year, because it plays a part in its deliberation.

MR. CLARK acknowledged that Representative Kopp was speaking more in terms of child custody considerations.

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REPRESENTATIVE KOPP agreed, and he advised that it has to do with protective orders that are issued by all levels of the judiciary [branch], including a magistrate with no legal training all the way up to a superior court judge. He offered that protective orders "are great," but are more limited and narrow in scope, as opposed to child custody issues relating to situations where people may be leaving an abusive situation, and then a court order follows them to Alaska directing the person to go back and bring the children. In such a situation, a person may want the state to have the ability to examine it carefully before jumping in. He acknowledged he had not read the bill word-for-word, and he would like to know whether it gets into child custody issues.

MR. CLARK deferred to the Department of Law (DOL).

[2:49:53 PM](#)

MARY LUNDQUIST, Senior Assistant Attorney General, Opinions, Appeals & Ethics Section, Office of the Attorney General, Department of Law (DOL), explained that protective orders govern certain child custody orders, but only with respect to their domestic violence protection aspect. Therefore, a protective order can have a child custody component to it but, she opined, Representative Kopp was addressing a true child custody order, and this bill does not cover the type of law he was contemplating.

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REPRESENTATIVE KOPP reiterated the importance of the committee being aware that protective orders are issued by individuals who do not have the same standard of training the public would expect across the board. He opined that with protective orders, the state should always default on the side of protecting people in harm's way, and the bill does not appear to be addressing that issue. Those issues, he remarked, are certainly more volatile and the state does want to be consistent with domestic violence protective orders with federal statute, he agreed, and also be aware of the situations it may cover, he remarked.

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MR. CLARK offered that the definition of "protection order" can be found in the Violence Against Women Act (VAWA), Section 204, paragraph 5, and he paraphrased as follows:

The protection order means any injunction, restraining order, or other order issued by a civil or criminal court for the purpose of preventing violence or threatening acts or harassment against sexual violence against contact or communication with or physical proximity to another person. And includes any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as a *pendente lite vitae* order in another proceeding if the civil or criminal order was issued in response to a complaint, petition, or motion filed by or on behalf of a person seeking protection.

MR. CLARK opined it is a narrower definition than ...

REPRESENTATIVE KOPP agreed.

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REPRESENTATIVE EASTMAN surmised that, currently, statute recognizes and enforces protective orders from other states. He asked the main difference in how it is currently enforced as opposed to what would happen under this bill.

MR. CLARK responded that the intent of the bill is to reconcile the requirement that a protective order issued, in another jurisdiction, be registered with an Alaskan court before enforcement. Whereas, he explained, the intent of VAWA and reconciling these statutes, is so that if someone were being menaced against someone whom they had a protective order against, they would receive immediate assistance from law enforcement. That assistance would occur even though the person had not yet taken the time to register the protective order, or were unaware their protective order should have been registered with the state, he said.

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REPRESENTATIVE EASTMAN noted that he could think of situations wherein protective orders are filed with good reason and then perhaps with less good reason, a reciprocity is filed against the person who filed the protective order. In that case there are protective orders going both ways. He asked whether there is a safety measure here so, in the event there is a state with less than ideal laws, that Alaska doesn't find itself enforcing something that is not a good idea. He commented that it would appear the assumption can go to a perceived victim who is filing the protective order, but then if orders are going both ways and the perpetrator is filing a protective order ... he does not want to see Alaskans hemmed up because of that.

MR. CLARK suggested that Representative Eastman may be referring to a protective order that could be construed as frivolous or unjust in some manner. He advised there is specific criteria in Section 2265, of the Violence Against Women Act, that specifies certain protective orders from other jurisdictions must meet, and paraphrased the following:

The issue in court must have jurisdiction and parties and the matter under the laws of the state, territory, or tribe, and the issue in court must give reasonable

notice and opportunity to the person against whom that order is sought in order for that person's due process to be protected.

MR. CLARK opined that it goes a long way toward eliminating the possibility of frivolousness. He deferred to Ms. Lundquist.

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MS. LUNDQUIST added that the protective order must appear valid on its face for law enforcement to enforce it. In addition to the protection, there must be a consistent order, that the issuing entity had jurisdiction, and due process was recognized. Although, she related, those issues are not looked at up front, the person against whom the violation of the protective order is brought has an opportunity to object in court as to whether there was jurisdiction in the issuing court, personal jurisdiction, subject matter jurisdiction, and whether they were given due process. Therefore, she said, there will be a ready opportunity to challenge a protective order once it's in court.

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REPRESENTATIVE EASTMAN asked whether any sort of recent analysis had been performed as to how those laws differ in other states, because he would like to identify the most restrictive state and its dealings with protective orders to get a better handle on how it might apply to Alaskans, particularly in a case where it was frivolous. He said he understands that courts are not always able to make that determination immediately, and often the tie does go to the person filing for an order and the details are sorted out later. He reiterated his question and asked what analysis had been done of other states, and whether there are any outliers of states handling these in a particularly extreme manner.

MS. LUNQUIST responded that the Violence Against Women Act (VAWA) requires the state to enforce a protective order as if it was an order of the enforcing state. Therefore, Alaska would enforce the protective order as if it was a state order, and that would improve the State of Alaska's arrests for violations of a protective order. The DOL has not performed an in-depth review of protective order statutes in other states because Alaska is required to enforce protective orders from other states, and other tribes under VAWA.

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CHAIR CLAMAN noted that related to full faith and credit provisions in the Constitution of the United States, it recognizes that Alaska's job is not to second guess the courts of other states, and that Alaska is to treat it as a valid judgement of that particular jurisdiction.

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REPRESENTATIVE REINBOLD noted several deletions in the bill, including the deletion of "filed in court" replaced with "recognized in another jurisdiction." She requested a deep explanation as to whether specific jurisdiction need to be defined, and if not, what exactly is the jurisdiction, and whether it impacts tribal courts.

MR. CLARK answered that the best way to understand the actual mechanics of the bill is to read Sec. 5 and 6 first [beginning page 3], and that the language inserted or deleted in other sections of the bill will become clear. He offered to walk the committee through Sec. 5 and 6, if it would be helpful.

REPRESENTATIVE REINBOLD asked whether that is necessary before Mr. Clark can answer the question of why "filed in court" is being deleted and "recognized in another jurisdiction" inserted.

MR. CLARK replied that the language accomplishes the purpose of the bill, to eliminate the requirement for a protective order from another jurisdiction being filed in an Alaska court before enforcement can act on it.

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REPRESENTATIVE REINBOLD asked Mr. Clark to go through Sec. 5 and 6.

MR. CLARK referred to the [Sectional Summary], Sec. 5 and 6, [page 1, paragraphs 5-7, and page 2, paragraphs 1-2] and paraphrased as follows [original punctuation provided]:

Section 5 adds a new section to statute, AS 18.65.867, regarding the enforcement and recognition of protective orders issued in other jurisdictions that have to do with stalking or sexual assault but not with domestic violence.

A protective order related to stalking or sexual assault issued "by a court of the United States, a court of another state or territory, a United States military tribunal, or a tribal court" has the same effect and must be recognized and enforced in the same manner as a protective order issued by an Alaska state court.

This section also cites United States Code Title 18, Chapter 2265, which is the part of the Violence Against Women Act that addresses protection orders originating in other jurisdictions. Chapter 2265 expressly states that orders issued in other jurisdictions do not have to be filed (registered) in an Alaska state court in order to be enforced here. Chapter 2265 also describes certain criteria the issuing jurisdiction needs to meet in order for its protection order to be given full faith and credit by another jurisdiction.

Section 5 further instructs law enforcement that a stalking- or sexual-assault-related protection order issued in another jurisdiction that appears authentic on its face should be (HB 8 Sectional Summary, Page 2 of 3.) presumed valid. (This might be characterized as erring on the side of caution when it comes to those in need of protection.)

Section 6 addresses protective orders relating to domestic violence. It amends AS 18.66.140 to state that (just as with protective orders relating to stalking and sexual assault in the absence of domestic violence, addressed in Section 5) a protection order related to domestic violence issued in another jurisdiction must be recognized and enforced just as if it were issued by an Alaskan court, regardless of whether the protection order has been filed (registered) with an Alaskan court.

This section also cites United States Code Title 18, Chapter 2265, which includes certain criteria the issuing jurisdiction needs to meet in order for its protection order to be given full faith and credit.

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MR. CLARK advised that when turning to other sections of the bill, the changes found bring those various sections into line with what was established in Sec. 5 and 6, in terms of the registration requirement or lack thereof in this case.

[3:07:22 PM](#)

REPRESENTATIVE REINBOLD stated that her question was whether jurisdiction needed to be defined, whether it was clearly defined enough there, and how it impacts tribal [courts].

MR. CLARK offered that it does not necessarily impact tribal courts, and it could be construed as a "welcomed further legitimization of the tribal courts." Substantively, he said, it accomplishes the removal of the requirement for the tribal court protections order to be registered with the state before enforcement can take place.

[3:08:21 PM](#)

REPRESENTATIVE REINBOLD surmised that his testimony was that it increased legitimation of the tribal courts, and asked how tribal courts are funded.

MR. CLARK responded that he does not feel qualified to answer that question thoroughly.

MR. CLARK, in response to Chair Claman, agreed that he is certainly not an expert in tribal court funding. Although, for example, the Civil Legal Services, Corp. in Alaska works to assist tribal courts to build and strengthen its institutions. He offered that the Alaska Court System is in greater collaboration with tribal courts and is undertaking the same activities in terms of building and fortifying its institutions.

CHAIR CLAMAN advised Representative Reinbold that it is fair to say Mr. Clark can't really answer her question.

[3:09:54 PM](#)

REPRESENTATIVE REINBOLD asked that someone offer information about tribal courts before the bill moves out of committee.

CHAIR CLAMAN asked that Mr. Clark locate an individual to offer more insight as to how tribal courts are funded. Chair Claman surmised that Representative Reinbold would like to know whether

funds from the state budget are directed to tribal courts, including the court system and executive branch.

REPRESENTATIVE REINBOLD replied, "Yes, and more."

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REPRESENTATIVE KOPP encouraged the committee members to read the detailed 7/30/2015 memo from Attorney General Richards, included within their bill packet. He related that it answers 99.9 percent of the questions asked here today regarding reconciling VAWA with Alaska statutes. He explained that a protective order is not an arrest warrant, it protects people and allows Alaska law enforcement to arrest if a protective order is violated, and that due process is required for the orders to be valid. Law enforcement's perspective is "if they're not in the registry it is hard because different formats are used in many different jurisdictions," and he encouraged registration of these orders in the Central Alaska Public Safety Information Network.

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CHAIR CLAMAN noted that Congress decided to, and what this bill incorporates to be in compliance with the federal law, is that in terms of protecting women, in particular, "we want to error on the side of protection." The reality is that someone hands law enforcement a piece of paper that appears to be a duly enacted court order, and asks law enforcement to enforce it. In that situation, he explained, law enforcement, under federal rules and this law, would be expected to follow that order, and the purpose of registering the order is to give law enforcement some degree of confidence. He described that the committee is making a policy decision "to provide greater protection than that allows," he said.

[HB 8 was held over.]

[3:14:41 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:14 p.m.