

HOUSE BILL No. 5275

October 17, 2001, Introduced by Reps. Faunce, Woronchak, George, Birkholz, Vander Veen, Allen, Meyer, Middaugh, Cassis, Jelinek, Pumford, Shackleton, Scranton, Newell, Richardville, Patterson, Kuipers, Toy, Gilbert, Sanborn and DeVuyst and referred to the Committee on Criminal Justice.

A bill to amend 1961 PA 236, entitled "Revised judicature act of 1961," (MCL 600.101 to 600.9948) by adding sections 2950d, 2950e, 2950f, and 2950g.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 2950D. (1) AS USED IN THIS SECTION AND SECTIONS 2950E,
2 2950F, AND 2950G:

3 (A) "FOREIGN PROTECTION ORDER" MEANS AN INJUNCTION OR OTHER
4 ORDER ISSUED BY A COURT OF ANOTHER STATE, INDIAN TRIBE, OR UNITED
5 STATES TERRITORY FOR THE PURPOSE OF PREVENTING A PERSON'S VIOLENT
6 OR THREATENING ACTS AGAINST, HARASSMENT OF, CONTACT WITH, COMMU-
7 NICATION WITH, OR PHYSICAL PROXIMITY TO ANOTHER PERSON. FOREIGN
8 PROTECTION ORDER INCLUDES TEMPORARY AND FINAL ORDERS ISSUED BY
9 CIVIL AND CRIMINAL COURTS OTHER THAN A SUPPORT OR CHILD CUSTODY
10 ORDER ISSUED PURSUANT TO STATE DIVORCE AND CHILD CUSTODY LAWS,

1 EXCEPT TO THE EXTENT THAT SUCH AN ORDER IS ENTITLED TO FULL FAITH
2 AND CREDIT UNDER OTHER FEDERAL LAW, WHETHER OBTAINED BY FILING AN
3 INDEPENDENT ACTION OR BY JOINING A CLAIM TO AN ACTION, IF A CIVIL
4 ORDER WAS ISSUED IN RESPONSE TO A COMPLAINT, PETITION, OR MOTION
5 FILED BY OR ON BEHALF OF A PERSON SEEKING PROTECTION.

6 (B) "LEIN" MEANS THE LAW ENFORCEMENT INFORMATION NETWORK
7 REGULATED UNDER THE L.E.I.N. POLICY COUNCIL ACT OF 1974, 1974 PA
8 163, MCL 28.211 TO 28.216.

9 (C) "NCIC PROTECTION ORDER FILE" MEANS THE NATIONAL CRIME
10 INFORMATION CENTER PROTECTION ORDER FILE MAINTAINED BY THE UNITED
11 STATES DEPARTMENT OF JUSTICE, FEDERAL BUREAU OF INVESTIGATION.

12 (2) A FOREIGN PROTECTION ORDER IS VALID IF ALL OF THE FOL-
13 LOWING CONDITIONS ARE MET:

14 (A) THE ISSUING COURT HAD JURISDICTION OVER THE PARTIES AND
15 SUBJECT MATTER UNDER THE LAWS OF THE ISSUING STATE, TRIBE, OR
16 TERRITORY.

17 (B) REASONABLE NOTICE AND OPPORTUNITY TO BE HEARD IS GIVEN
18 TO THE RESPONDENT SUFFICIENT TO PROTECT THE RESPONDENT'S RIGHT TO
19 DUE PROCESS. IN THE CASE OF EX PARTE ORDERS, NOTICE AND OPPORTU-
20 NITY TO BE HEARD MUST BE PROVIDED TO THE RESPONDENT WITHIN THE
21 TIME REQUIRED BY STATE OR TRIBAL LAW, AND IN ANY EVENT WITHIN A
22 REASONABLE TIME AFTER THE ORDER IS ISSUED, SUFFICIENT TO PROTECT
23 THE RESPONDENT'S DUE PROCESS RIGHTS.

24 (3) A CHILD CUSTODY OR SUPPORT PROVISION WITHIN A VALID FOR-
25 EIGN PROTECTION ORDER SHALL BE ACCORDED FULL FAITH AND CREDIT BY
26 THE COURT AND SHALL BE SUBJECT TO THE SAME ENFORCEMENT PROCEDURES
27 AND PENALTIES AS ANY PROVISION WITHIN A PERSONAL PROTECTION ORDER

1 ISSUED IN THIS STATE. THIS SUBSECTION SHALL NOT BE CONSTRUED TO
2 PRECLUDE LAW ENFORCEMENT OFFICERS' COMPLIANCE WITH THE CHILD PRO-
3 TECTION LAW, 1975 PA 238, MCL 722.621 TO 722.638.

4 (4) ALL OF THE FOLLOWING MAY BE AFFIRMATIVE DEFENSES TO ANY
5 CHARGE OR PROCESS FILED SEEKING ENFORCEMENT OF A FOREIGN PROTEC-
6 TION ORDER:

7 (A) LACK OF JURISDICTION BY THE ISSUING COURT OVER THE PAR-
8 TIES OR SUBJECT MATTER.

9 (B) FAILURE TO PROVIDE NOTICE AND OPPORTUNITY TO BE HEARD.

10 (C) LACK OF FILING OF A COMPLAINT, PETITION, OR MOTION BY OR
11 ON BEHALF OF A PERSON SEEKING PROTECTION IN A CIVIL FOREIGN PRO-
12 TECTION ORDER.

13 SEC. 2950E. A VALID FOREIGN PROTECTION ORDER SHALL BE
14 ACCORDED FULL FAITH AND CREDIT BY THE COURT AND SHALL BE SUBJECT
15 TO THE SAME ENFORCEMENT PROCEDURES AND PENALTIES AS IF IT WERE
16 ISSUED IN THIS STATE.

17 SEC. 2950F. (1) A FOREIGN PROTECTION ORDER SOUGHT BY A
18 PETITIONER AGAINST A SPOUSE OR INTIMATE PARTNER AND ISSUED
19 AGAINST BOTH THE PETITIONER AND RESPONDENT IS ENTITLED TO FULL
20 FAITH AND CREDIT AGAINST THE RESPONDENT AND IS ENFORCEABLE
21 AGAINST THE RESPONDENT.

22 (2) A FOREIGN PROTECTION ORDER SOUGHT BY A PETITIONER
23 AGAINST A SPOUSE OR INTIMATE PARTNER AND ISSUED AGAINST BOTH THE
24 PETITIONER AND RESPONDENT IS NOT ENTITLED TO FULL FAITH AND
25 CREDIT AND IS NOT ENFORCEABLE AGAINST THE PETITIONER UNLESS BOTH
26 OF THE FOLLOWING CONDITIONS ARE MET:

1 (A) THE RESPONDENT FILED A CROSS- OR COUNTER-PETITION,
2 COMPLAINT, OR OTHER WRITTEN PLEADING SEEKING THE FOREIGN
3 PROTECTION ORDER.

4 (B) THE ISSUING COURT MADE SPECIFIC FINDINGS AGAINST BOTH
5 THE PETITIONER AND THE RESPONDENT AND DETERMINED THAT EACH PARTY
6 WAS ENTITLED TO RELIEF.

7 (3) FOR PURPOSES OF THIS SECTION, "SPOUSE OR INTIMATE
8 PARTNER" MEANS ALL OF THE FOLLOWING:

9 (A) SPOUSE.

10 (B) FORMER SPOUSE.

11 (C) AN INDIVIDUAL WITH WHOM PETITIONER HAS HAD A CHILD IN
12 COMMON.

13 (D) AN INDIVIDUAL RESIDING OR HAVING RESIDED IN THE SAME
14 HOUSEHOLD AS PETITIONER.

15 (E) AN INDIVIDUAL WITH WHOM PETITIONER HAS OR HAS HAD A
16 DATING RELATIONSHIP AS THAT TERM IS DEFINED IN SECTION 2950(30).

17 SEC. 2950G. (1) LAW ENFORCEMENT OFFICERS, PROSECUTORS, AND
18 THE COURT SHALL ENFORCE A FOREIGN PROTECTION ORDER OTHER THAN A
19 CONDITIONAL RELEASE ORDER OR PROBATION ORDER ISSUED BY A COURT IN
20 A CRIMINAL PROCEEDING IN THE SAME MANNER THAT IT WOULD ENFORCE A
21 PERSONAL PROTECTION ORDER ISSUED IN THIS STATE UNDER SECTION 2950
22 OR 2950A OR SECTION 2(H) OF CHAPTER XIIA OF THE PROBATE CODE OF
23 1939, 1939 PA 288, MCL 712A.2, UNLESS INDICATED OTHERWISE IN THIS
24 SECTION.

25 (2) A FOREIGN PROTECTION ORDER THAT IS A CONDITIONAL RELEASE
26 ORDER OR A PROBATION ORDER ISSUED BY A COURT IN A CRIMINAL
27 PROCEEDING SHALL BE ENFORCED PURSUANT TO SECTION 15(1)(G) OF

1 CHAPTER IV OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL
2 764.15, THE UNIFORM CRIMINAL EXTRADITION ACT, 1937 PA 144, MCL
3 780.1 TO 780.31, AND THE UNIFORM RENDITION OF ACCUSED PERSONS
4 ACT, 1968 PA 281, MCL 780.41 TO 780.45.

5 (3) A LAW ENFORCEMENT OFFICER MAY RELY UPON A COPY OF ANY
6 PROTECTION ORDER THAT APPEARS TO BE A FOREIGN PROTECTION ORDER
7 AND THAT IS PROVIDED TO THE LAW ENFORCEMENT OFFICER FROM ANY
8 SOURCE IF THE PUTATIVE FOREIGN PROTECTION ORDER APPEARS TO CON-
9 TAIN ALL OF THE FOLLOWING:

10 (A) THE NAMES OF THE PARTIES.

11 (B) THE DATE THE PROTECTION ORDER WAS ISSUED, WHICH IS PRIOR
12 TO THE DATE WHEN ENFORCEMENT IS SOUGHT.

13 (C) THE TERMS AND CONDITIONS AGAINST RESPONDENT.

14 (D) THE NAME OF THE ISSUING COURT.

15 (E) THE SIGNATURE OF OR ON BEHALF OF A JUDICIAL OFFICER.

16 (F) NO OBVIOUS INDICATION THAT THE ORDER IS INVALID, SUCH AS
17 AN EXPIRATION DATE THAT IS BEFORE THE DATE ENFORCEMENT IS
18 SOUGHT.

19 (4) THE FACT THAT A PUTATIVE FOREIGN PROTECTION ORDER THAT
20 AN OFFICER HAS BEEN SHOWN CANNOT BE VERIFIED ON LEIN OR THE NCIC
21 NATIONAL PROTECTION ORDER FILE IS NOT GROUNDS FOR A LAW ENFORCE-
22 MENT OFFICER TO REFUSE TO ENFORCE THE TERMS OF THE PUTATIVE FOR-
23 EIGN PROTECTION ORDER, UNLESS IT IS APPARENT TO THE OFFICER THAT
24 THE PUTATIVE FOREIGN PROTECTION ORDER IS INVALID. A LAW ENFORCE-
25 MENT OFFICER MAY RELY UPON THE STATEMENT OF PETITIONER THAT THE
26 PUTATIVE FOREIGN PROTECTION ORDER THAT HAS BEEN SHOWN TO THE
27 OFFICER REMAINS IN EFFECT AND MAY RELY UPON THE STATEMENT OF

1 PETITIONER OR RESPONDENT THAT RESPONDENT HAS RECEIVED NOTICE OF
2 THAT ORDER.

3 (5) IF A PERSON SEEKING ENFORCEMENT OF A FOREIGN PROTECTION
4 ORDER DOES NOT HAVE A COPY OF THE FOREIGN PROTECTION ORDER, THE
5 LAW ENFORCEMENT OFFICER SHALL ATTEMPT TO VERIFY THROUGH LEIN, OR
6 THE NCIC PROTECTION ORDER FILE, ADMINISTRATIVE MESSAGING, CON-
7 TACTING THE COURT THAT ISSUED THE FOREIGN PROTECTION ORDER, CON-
8 TACTING THE LAW ENFORCEMENT AGENCY IN THE ISSUING JURISDICTION,
9 CONTACTING THE ISSUING JURISDICTION'S PROTECTION ORDER REGISTRY,
10 OR ANY OTHER METHOD THE LAW ENFORCEMENT OFFICER BELIEVES TO BE
11 RELIABLE, THE EXISTENCE OF THE FOREIGN PROTECTION ORDER AND ALL
12 OF THE FOLLOWING:

13 (A) THE NAMES OF THE PARTIES.

14 (B) THE DATE THE FOREIGN PROTECTION ORDER WAS ISSUED, WHICH
15 IS PRIOR TO THE DATE WHEN ENFORCEMENT IS SOUGHT.

16 (C) TERMS AND CONDITIONS AGAINST RESPONDENT.

17 (D) THE NAME OF THE ISSUING COURT.

18 (E) NO OBVIOUS INDICATION THAT THE FOREIGN PROTECTION ORDER
19 IS INVALID, SUCH AS AN EXPIRATION DATE THAT IS BEFORE THE DATE
20 ENFORCEMENT IS SOUGHT.

21 (6) THE LAW ENFORCEMENT OFFICER SHALL ENFORCE THE FOREIGN
22 PROTECTION ORDER IF THIS INFORMATION IS VERIFIED, SUBJECT TO
23 SUBSECTION (9).

24 (7) IF A PERSON SEEKING ENFORCEMENT OF A FOREIGN PROTECTION
25 ORDER DOES NOT HAVE A COPY OF THE FOREIGN PROTECTION ORDER, AND
26 THE LAW ENFORCEMENT OFFICER CANNOT VERIFY THE ORDER AS DESCRIBED
27 IN SUBSECTION (5), THE LAW ENFORCEMENT OFFICER SHALL MAINTAIN THE

1 PEACE AND TAKE APPROPRIATE ACTION WITH REGARD TO ANY VIOLATION OF
2 CRIMINAL LAW.

3 (8) WHEN ENFORCING A FOREIGN PROTECTION ORDER, THE LAW
4 ENFORCEMENT OFFICER SHALL MAINTAIN THE PEACE AND TAKE APPROPRIATE
5 ACTION WITH REGARD TO ANY VIOLATION OF CRIMINAL LAW. THE PENAL-
6 TIES PROVIDED FOR UNDER SECTIONS 2950 AND 2950A AND CHAPTER XIIA
7 OF THE PROBATE CODE OF 1939, 1939 PA 288, MCL 712A.1 TO 712A.32,
8 MAY BE IMPOSED IN ADDITION TO A PENALTY THAT MAY BE IMPOSED FOR
9 ANY CRIMINAL OFFENSE ARISING FROM THE SAME CONDUCT.

10 (9) IF THERE IS NO EVIDENCE THAT THE RESPONDENT HAS BEEN
11 SERVED WITH OR RECEIVED NOTICE OF THE FOREIGN PROTECTION ORDER,
12 THE LAW ENFORCEMENT OFFICER SHALL SERVE THE RESPONDENT WITH A
13 COPY OF THE FOREIGN PROTECTION ORDER, OR ADVISE THE RESPONDENT
14 ABOUT THE EXISTENCE OF THE FOREIGN PROTECTION ORDER, THE NAME OF
15 THE ISSUING COURT, THE SPECIFIC CONDUCT ENJOINED, THE PENALTIES
16 FOR VIOLATING THE ORDER IN THIS STATE, AND, IF THE OFFICER IS
17 AWARE OF THE PENALTIES IN THE ISSUING JURISDICTION, THE PENALTIES
18 FOR VIOLATING THE ORDER IN THE ISSUING JURISDICTION. THE OFFICER
19 SHALL ENFORCE THE FOREIGN PROTECTION ORDER AND SHALL PROVIDE THE
20 PETITIONER, OR CAUSE THE PETITIONER TO BE PROVIDED, WITH PROOF OF
21 SERVICE OR PROOF OF ORAL NOTICE. THE OFFICER ALSO SHALL PROVIDE
22 THE ISSUING COURT, OR CAUSE THE ISSUING COURT TO BE PROVIDED,
23 WITH A PROOF OF SERVICE OR PROOF OF ORAL NOTICE, IF THE ADDRESS
24 OF THE ISSUING COURT IS APPARENT ON THE FACE OF THE FOREIGN PRO-
25 TECTION ORDER OR OTHERWISE IS READILY AVAILABLE TO THE OFFICER.
26 IF THE FOREIGN PROTECTION ORDER IS ENTERED INTO LEIN OR THE NCIC
27 PROTECTION ORDER FILE, THE OFFICER SHALL PROVIDE THE LEIN OR THE

1 NCIC PROTECTION ORDER FILE ENTERING AGENCY, OR CAUSE THE LEIN OR
2 NCIC PROTECTION ORDER FILE ENTERING AGENCY TO BE PROVIDED, WITH A
3 PROOF OF SERVICE OR PROOF OF ORAL NOTICE. IF THERE IS NO EVI-
4 DENCE THAT THE RESPONDENT HAS RECEIVED NOTICE OF THE FOREIGN PRO-
5 TECTION ORDER, THE RESPONDENT SHALL BE GIVEN AN OPPORTUNITY TO
6 COMPLY WITH THE FOREIGN PROTECTION ORDER BEFORE THE OFFICER MAKES
7 A CUSTODIAL ARREST FOR VIOLATION OF THE FOREIGN PROTECTION
8 ORDER. THE FAILURE TO COMPLY IMMEDIATELY WITH THE FOREIGN PRO-
9 TECTION ORDER IS GROUNDS FOR AN IMMEDIATE CUSTODIAL ARREST. THIS
10 SUBSECTION DOES NOT PRECLUDE AN ARREST UNDER SECTION 15 OR 15A OF
11 CHAPTER IV OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL
12 764.15 AND 764.15A, OR A PROCEEDING UNDER SECTION 14 OF CHAPTER
13 XIIIA OF THE CODE OF CRIMINAL PROCEDURE, 1927 PA 175, MCL
14 712A.14.

15 (10) A LAW ENFORCEMENT OFFICER, PROSECUTOR, OR COURT PERSON-
16 NEL ACTING IN GOOD FAITH ARE IMMUNE FROM CIVIL AND CRIMINAL
17 LIABILITY IN ANY ACTION ARISING FROM THE ENFORCEMENT OF A FOREIGN
18 PROTECTION ORDER. THIS IMMUNITY DOES NOT IN ANY MANNER LIMIT OR
19 IMPLY AN ABSENCE OF IMMUNITY IN OTHER CIRCUMSTANCES.

20 Enacting section 1. This amendatory act does not take
21 effect unless all of the following bills of the 91st Legislature
22 are enacted into law:

23 (a) Senate Bill No. _____ or House Bill No. _____ (request
24 no. 05225'01 a).

25 (b) Senate Bill No. _____ or House Bill No. _____ (request
26 no. 05225'01 b).

1 (c) Senate Bill No. _____ or House Bill No. _____ (request
2 no. 05225'01 c).

3 (d) Senate Bill No. _____ or House Bill No. _____ (request
4 no. 05225'01 d).

5 (e) Senate Bill No. _____ or House Bill No. _____ (request
6 no. 05225'01 e).

7 (f) Senate Bill No. _____ or House Bill No. _____ (request
8 no. 05225'01 f).

9 (g) Senate Bill No. _____ or House Bill No. _____ (request
10 no. 05225'01 g).

11 (h) Senate Bill No. _____ or House Bill No. _____ (request
12 no. 05225'01 h).