

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H2/25/03 S3/17/03

A Bill

HOUSE BILL 1432

5 By: Representatives Judy, Mahony, Bledsoe, Agee, Borhauer, Dees, Elliott, King, Schulte, Walters
6 By: Senators Horn, Salmon, Madison, Faris, B. Johnson
7
8

For An Act To Be Entitled

10 AN ACT CONCERNING THE FULL FAITH AND CREDIT FOR
11 OUT-OF-STATE PROTECTION ORDERS; TO REPEAL
12 ARKANSAS CODE § 9-15-301; TO AMEND ARKANSAS CODE
13 § 9-15-302, § 9-15-303, and § 5-53-134; AND FOR
14 OTHER PURPOSES.
15

Subtitle

16 CONCERNING THE FULL FAITH AND CREDIT FOR
17 OUT-OF-STATE PROTECTION ORDERS.
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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
22

23 SECTION 1. Arkansas Code § 9-15-301 is repealed.

24 ~~9-15-301. Filing in this state.~~

25 ~~A certified copy of an order of protection issued in another state may~~
26 ~~be filed in the office of the clerk of any circuit court of this state.~~
27

28 SECTION 2. Arkansas Code § 9-15-302 is amended to read as follows:

29 9-15-302. Full faith and credit.

30 (a) Any ~~protection order~~ order of protection issued that ~~is consistent~~
31 ~~with~~ meets the requirements of subsection (b) subsections (b) or (c) of this
32 section ~~by the issuing court~~ issued by a court of one (1) another state, or a
33 federally recognized Indian tribe, or a territory shall be afforded full
34 faith and credit by the courts of this state, ~~and upon registration as~~
35 ~~provided in § 9-15-301, and~~ shall be enforced by law enforcement as if it
36 were issued in this state.



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1 (b) ~~A protection order~~ An order of protection issued by a court of a
2 ~~state or tribal court~~ another state, a federally recognized Indian tribe, or
3 ~~a territory~~ is consistent with meets the requirements of this section if:

4 (1) The court had jurisdiction over the parties and matters
5 under the laws of ~~such~~ the other state, ~~or~~ the federally recognized Indian
6 ~~tribe, or the territory;~~ and

7 (2)(A) Reasonable notice and opportunity to be heard was given
8 to the person against whom the order ~~is~~ was sought sufficient to protect that
9 person's right to due process.

10 (B) In the case of ex parte orders, notice and opportunity
11 to be heard must be provided within the time required by the laws or rules of
12 the other state, ~~or tribal law~~ the federally recognized Indian tribe, or the
13 territory and, in any event, within a reasonable time after the order is
14 issued sufficient to protect the ~~respondent's~~ due process rights of the party
15 against whom the order is enforced.

16 (c) ~~A protection order issued by a state or tribal court against one~~
17 ~~who has petitioned, filed a complaint, or otherwise filed a written pleading~~
18 ~~for protection against abuse by a spouse or intimate partner is not entitled~~
19 ~~to full faith and credit if:~~

20 (1) ~~No cross or counter petition, complaint, or other written~~
21 ~~pleading was filed seeking such a protection order; or~~

22 (2)(A) ~~A cross or counter petition has been filed; and~~

23 (B) ~~The court did not make specific findings that each~~
24 ~~party was entitled to such an order.~~

25 (d)(1) ~~After submission of an order of protection to the circuit~~
26 ~~clerk, the circuit judge shall review the order to determine whether it~~
27 ~~complies with subsection (b) of this section.~~

28 (2) ~~If it does, then the clerk shall register it and forward it~~
29 ~~to law enforcement as provided in § 12-12-215(b)(1).~~

30 (3) ~~Furthermore, protection orders issued by a court of this~~
31 ~~state shall only be forwarded to law enforcement as provided in § 12-12-~~
32 ~~215(b)(1) if the protection orders are consistent with subsection (b) of this~~
33 ~~section.~~

34 (c) An order of protection issued against both the petitioner and the
35 respondent by a court of another state, a federally recognized Indian tribe,
36 or a territory shall not be enforceable against the petitioner unless:

1 (1) The respondent filed a cross or counter petition, complaint,
2 or other written pleading seeking an order of protection;

3 (2) The issuing court made specific findings against both the
4 petitioner and the respondent; and

5 (3) The issuing court determined that each party was entitled to
6 an order.

7 (d)(1) A person seeking recognition and enforcement of an out-of-state
8 order of protection under this section may present a copy of the order of
9 protection to the local law enforcement office in the city or county where
10 enforcement of the order may be necessary.

11 (2) After receiving a copy of the order of protection, the local
12 law enforcement office shall enter the order into the Arkansas Crime
13 Information Center protection order registry file.

14 (3) There shall be no fee for entering the out-of-state order of
15 protection.

16 (4) The law enforcement office shall not notify the party
17 against whom the order has been issued that an out-of-state order of
18 protection has been entered in this state.

19 (5) Entry of the out-of-state order of protection into the
20 Arkansas Crime Information Center protection order registry file shall not be
21 required for enforcement of the order of protection in this state.

22 (e)(1)(A) When enforcing an out-of-state order of protection, a law
23 enforcement officer shall determine if there is probable cause to believe
24 that an out-of-state order of protection exists.

25 (B) A law enforcement officer may rely upon:

26 (i) An out-of-state order of protection that has
27 been provided to the officer by any source; or

28 (ii)(a) The statement of any person protected by an
29 out-of-state order of protection that the order exists; and

30 (b) Verification by the clerk of the court of
31 the other state, the federally recognized Indian tribe, or the territory in
32 writing, by telephone, by facsimile transmission, or by other electronic
33 transmission.

34 (2)(A) When enforcing an out-of-state order of protection, a law
35 enforcement officer shall determine if there is probable cause to believe
36 that the terms of the order have been violated.

1 (B) The law enforcement officer may rely upon:

2 (i) Any events he or she witnessed;

3 (ii) The statement of any person who claims to be a
4 witness; or

5 (iii) Any other evidence.

6 (3) A law enforcement officer shall not refuse to enforce the
7 terms of the order of protection on the grounds that the order has not been
8 filed with the local law enforcement office or entered into the Arkansas
9 Crime Information Center protection order registry file unless the law
10 enforcement officer has a reasonable belief that the order is not authentic
11 on its face.

12
13 SECTION 3. Arkansas Code § 9-15-303 is amended to read as follows:

14 9-15-303. Immunity from liability.

15 Law enforcement officers and law enforcement agencies shall be ~~entitled~~
16 ~~to the same immunity~~ immune from civil or criminal liability as when
17 ~~enforcing in-state orders~~ if acting in good faith in an effort to comply with
18 this subchapter on out-of-state orders.

19
20 SECTION 4. Arkansas Code § 5-53-134 is amended to read as follows:

21 5-53-134. Violation of a protection order.

22 (a)(1) A person commits the offense of violation of an order of
23 protection if:

24 ~~(1)~~(A) A ~~chancery~~ circuit court or other court with
25 competent jurisdiction has issued a temporary order of protection or an order
26 of protection against him or her pursuant to the Domestic Abuse Act of 1991,
27 § 9-15-101 et seq.; ~~and~~

28 ~~(2)~~(B) He or she has received actual notice or notice
29 pursuant to the Arkansas Rules of Civil Procedure of a temporary order of
30 protection or an order of protection pursuant to the Domestic Abuse Act of
31 1991, § 9-15-101 et seq.; and

32 ~~(3)~~(C) He or she knowingly violates a condition of an
33 order of protection issued pursuant to the Domestic Abuse Act of 1991, § 9-
34 15-101 et seq.

35 (2) A person commits the offense of violation of an out-of-state
36 order of protection if:

1 (A) The court of another state, a federally recognized
2 Indian tribe, or a territory with jurisdiction over the parties and matters
3 has issued a temporary order of protection or an order of protection against
4 him or her pursuant to the laws or rules of the state, federally recognized
5 Indian tribe, or territory;

6 (B) He or she has received actual notice or other lawful
7 notice of a temporary order of protection or an order of protection pursuant
8 to the laws or rules of the other state, the federally recognized Indian
9 tribe, or the territory;

10 (C) He or she knowingly violates a condition of an order
11 of protection issued pursuant to the laws or rules of the other state, the
12 federally recognized Indian tribe, or the territory; and

13 (D) The requirements of § 9-15-302 concerning the full
14 faith and credit for an out-of-state order of protection have been met.

15 (b) Violation of an order of protection under this section is a Class
16 A misdemeanor.

17 (c)(1) A law enforcement officer may arrest and take into custody
18 without a warrant any person who the law enforcement officer has probable
19 cause to believe;

20 (A) ~~is~~ Is subject to an order of protection issued
21 pursuant to the laws of this state; and

22 (B) ~~who the officer has probable cause to believe has~~ Has
23 violated the terms of the order, even if the violation did not take place in
24 the presence of the law enforcement officer.

25 (2) Under Arkansas Code 9-15-302, a law enforcement officer or
26 agency may arrest and take into custody without a warrant any person who the
27 law enforcement officer or agency has probable cause to believe:

28 (i) Is subject to an order of protection issued pursuant
29 to the laws or rules of another state, a federally recognized Indian tribe,
30 or a territory; and

31 (ii) Has violated the terms of the out-of-state order of
32 protection, even if the violation did not take place in the presence of the
33 law enforcement officer.

34 (d) It shall be an affirmative defense to a prosecution under this
35 section that the parties have reconciled prior to the violation of the order.

36 (e) Any law enforcement officer acting in good faith and exercising

1 due care in making an arrest for domestic abuse in an effort to comply with
2 this subchapter shall have immunity from civil or criminal liability.

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4 /s/ Judy
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