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House Judiciary Committee  
2004 Kansas Legislative Session

**TESTIMONY OF RONALD W. NELSON**

Supporting:

The Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (UIEDVPA) –  
2004 HB 2697

Mr. Chairman and Members of the Committee:

Good afternoon. My name is Ronald W. Nelson. I am a lawyer practicing exclusively in the area of domestic relations law in Overland Park. I am also the current chair of the Family Law Section of the Kansas Bar Association. My clientele is fairly evenly split between representation of men and women and I have handled a significant number of matters, both in the trial and appellate courts regarding issues surrounding protection orders.

Today I am testifying in favor of passage of the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (UIEDVPA), which is the subject of House Bill No. 2697.

The Uniform Act is an important bill to provide a uniform method by which the states can meet the requirements of federal law (as found in the Federal Violence Against Women Act of 1994) for registration and enforcement of protection orders issued in other states. At the current time, there is no easy method by which the orders of other states may be registered or enforced in the state of Kansas and, as a result, persons seeking to enforce those orders must use other provisions of Kansas law that are ill-suited to the specific facts existing in these cases, such as the Uniform Enforcement of Foreign Judgments Act (K.S.A. 60-3001 et seq., which relates to enforcement of money judgments).

Provision of an easy manner by which orders from other states may be registered and enforced is an important advance for victims of domestic violence. Too often victims are required to seek multiple orders by filing multiple actions in various states because they are not provided with a simple method by which the orders they have obtained elsewhere may be enforced. The Uniform Act provides that simple method and guidelines by which the courts may evaluate which orders should be granted enforcement under federal law and procedural guidelines set by the states. One of the important goals of legislation in this area is clarity and direction to those parties who will be using the Act. In this increasingly complex area in which federal law intersects with state law, it is best to provide a roadmap in the statutes by which correct procedures can be completed.

Having said that, my review of the House Bill indicates that it is not the Uniform Act and that there are important provisions of the Uniform Act (as that Act was amended in 2002) lacking from the bill. I urge that the Committee, and the legislature, adopt the Uniform Act as it has been amended in 2002, and that Kansas not adopt a “non-uniform” version of the Act. The advantages of passing a purely uniform act are manifest: in interpreting the act a court may look to interpretations made by courts of other states under the same or similar circumstances and there is little danger that the court will interpret the act in an improper manner using its non-uniform nature as a reason for that deviation. The Uniform Act has had a thorough airing nationally and it is best to take advantage of that fact in consideration of this legislation.

Those areas of HB2697 that are different from the Uniform Act and which should be modified back to that language are: Restore the Short Title.

1. Section 1(e) should read:

(e) “Protection order” means any injunction or other temporary or final order, issued for the purpose of preventing violent or threatening acts against, harassment of, contact or communication with or physical proximity to another individual. ~~This includes any temporary or final order issued by a civil or criminal court whether obtained by filing an independent action or as part of another proceeding if any civil order issued was in response to a complaint, petition or motion filed by or on behalf of a person seeking protection;~~

American case law has generally prohibited the enforcement in one state the criminal laws and penalties of another state. The way in which this bill is presently worded would significantly alter current law.

3. The first sentence of Section 3(a) of the Uniform Act should be reinserted before the existing language in New Sec. 2(a) to read:

*A person authorized by the law of this State to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in a tribunal of this State. The tribunal shall enforce the terms of the order, including terms that provide relief that a tribunal of this State would lack power to provide but for this section. The tribunal shall enforce the order, whether the order was obtained by independent action or in another proceeding, if it is an order issued in response to a complaint, petition, or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the tribunal shall follow the procedures of this State for the enforcement of protection orders.*

The first sentence of the uniform act is left out of the present bill and its omission makes clouds the meaning of the paragraph, since the rest of the sentence relies on the first as its object.

4. Section 3(b) of the Uniform Act should be restored after New Sec. 2(a), which reads:

“A tribunal of this State may not enforce a foreign protection order issued by a tribunal of a State that does not recognize the standing of a protected individual to seek enforcement of the order.”

This section provides that only those persons who were granted standing to enforce the protection order in the state in which that order was issued may seek enforcement of the order. Thus, if a state obtained the order, only the state can enforce that order, unless that order provides the provision may be enforced by the individual seeking to enforce it.

5. The bill removes the uniform procedure for enforcement. That procedure should be restored to the bill. A major purpose of the bill is registration of foreign court orders. Without a provision stating how those orders are to be registered, the bill leaves open to interpretation how that is to be accomplished. No other Kansas statute provides an adequate method by which foreign protection orders may be filed – the Uniform Enforcement of Foreign Judgments Act relates to money judgments and it is ill suited to the specific needs of orders of protection (e.g. confidentiality provisions, immediate enforceability of orders, provision that orders to be registered be final). Neither the UCCJEA nor the UIFSA provide any method for registration of orders not covered by their specific terms (i.e. custody and support).

While a protected individual is not required to register a valid foreign protection order in order for it to be enforced, it is highly desirable that the state provide a manner by which that registration may be accomplished. The procedure set forth in the Uniform Act provides a clear and simple procedure to accomplish that registration. The purpose of these procedures is to make it as easy as possible for the protected individual to register the protection order and thus facilitate its enforcement. It also makes clear that there is no fee required to register those orders. The following should be inserted into the bill at an appropriate place:

#### SECTION 5. REGISTRATION OF ORDER.

(a) Any individual may register a foreign protection order in this State. To register a foreign protection order, an individual shall present a certified copy of the order to the district court.

(b) Upon receipt of a foreign protection order, the district court shall register the order in accordance with this section. After the order is registered, the district court clerk shall furnish to the individual registering the order a certified copy of the registered order.

(c) The district court shall register an order upon presentation of a copy of a protection order which has been certified by the issuing State. A registered foreign protection order that is inaccurate or is not currently in effect must be corrected or removed from the registry in accordance with the law of this State.

(d) An individual registering a foreign protection order shall file an affidavit by the protected individual stating that, to the best of the protected individual's knowledge, the order is currently in effect.

(e) A foreign protection order registered under this Act may be entered in any existing state or federal registry of protection orders, in accordance with applicable law.

(f) A fee may not be charged for the registration of a foreign protection order.

These changes would enhance the bill and provide a simplified manner by which these important orders may be enforced, consistent with federal law and requirements. Thank you.

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