



New Jersey Division of Criminal Justice

***Enforcement of
Out-of-State
Restraining Orders or
Orders of Protection
in
Domestic Violence Cases***

Module 3

In-Service Training
For
Police Officers

Instructor Manual

Note

This training module is for law enforcement use only. It is intended to serve as a summary of legal concepts. It does not constitute the creation of a prescribed legal standard. It should not be construed as evidential in any criminal or civil proceedings.

As with all training material that is date sensitive, the instructor should ensure that the most current training material is being used.

The New Jersey Division of Criminal Justice has prepared the following domestic violence training programs, with:

Dynamics of Domestic Violence, Module 1, both instructor and student manuals

Legal Aspects of Domestic Violence, Module 2, both instructor and student manuals

Enforcement of Out-of-State Restraining Orders or Orders of Protection in Domestic Violence Cases, Module 3, both instructor and student manuals

Interviewing Techniques in Domestic Violence Cases, Module 4, both instructor and student manuals

Handling a Domestic Violence Call, In-Service Training for Police Dispatchers, both instructor and student manuals

Training Guide for Completing the Victim Notification Form

- ◆ Training Guide for Completing the Domestic Violence Complaint and Application for a Temporary Restraining Order

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Enforcement of Out-of-State Restraining Orders or Orders of Protection in Domestic Violence Casesⁱ

Introduction

Domestic violence crosses state boundaries. Victims may leave the states where they had resided and where they had obtained restraining orders to protect themselves against further attacks by their batterers. Womenⁱⁱ who leave their batterers are at a 75 percent greater risk of being killed by batterers than those who stay.ⁱⁱⁱ One report states that "most battered women move to another state to escape their batterer and hide from him."^{iv}

The majority of the states do not provide the fleeing victims of domestic violence with protection pursuant to the restraining orders they had obtained in their home states. Most states refused to grant full faith and credit to out of state orders. "This was a serious breach in the protection afforded victims of domestic violence. Without full faith and credit statutes, a state only has the power to protect victims of domestic violence within its boundaries, limiting the protection afforded to victims if they are forced to move or flee to another state."^v

Recognizing that domestic violence is a national problem that transcends state lines, the federal government in 1994 enacted the Violence Against Women Act (VAWA) to afford full faith and credit to protection orders issued in sister states.^{vi}

I. Federal Law

The federal law provides that a protective order of one state or Indian tribe is to be accorded full faith and credit by the court of another state and the order is to be enforced as if it were the order of the enforcing state. A protective order is to be accorded full faith and credit if the

- the court had jurisdiction over the parties and the matter under the law of such state, and
- reasonable notice and opportunity to be heard was given to the person against whom the order was sought sufficient to protect that person's right of due process.
- In the case of *ex parte* orders, notice and opportunity to be heard must be provided within the time required by state law, and in any event within a reasonable time after the order is issued sufficient to protect the respondent's due process rights.⁷

This training program discusses in detail the Attorney General's *Guidelines for the Enforcement of Out-of-State Restraining Orders or Orders of Protection in Domestic Violence Cases.*

- A. **Due process requirements.** There is no uniformity among the states regarding the procedure for notification that the due process requirement in the federal law have been met. Two examples of accomplishing this are:

The Pennsylvania Battered Women’s Justice Project recommends that a “Certification of Protection/Restraining Order” be attached to all orders of protection. New York, on the other hand, has printed on its forms a statement that the due process requirements had been met and that the order must be honored and enforced by other states.⁸ The New Jersey restraining order also states that the order meets the criteria of the federal law for enforcement outside of New Jersey.

- B. **No registration required.** The federal law does not require the victim register the out-of-state restraining order in the state where she currently resides in order to have the protections of that order. “Women who possess a valid order of protection need to be protected whether or not their order is registered or filed with the court.”⁹

Victims may not be aware of state laws or procedures regarding enforcement of out-of-state orders. Many people believe that laws are the same regardless of what state a person is in. Victims of abuse may be more concerned with their safety than with legal procedures.

If registration were required, a victim could be “unprotected and vulnerable from the time they enter a new state until the time they become aware of and satisfy registration requirements.”¹⁰

- C. The out-of-state court order is to be enforced even if:
- the victim would not be eligible for a restraining order or an order of protection in this state, or
 - If the out-of-state order grants the named applicant more relief than the person would have received under New Jersey law.

Points to Emphasize:

- The federal law does not require registration of an out-of-state court order for the victim to receive protection under that order.
- Under the federal Violence Against Women Act, a facially valid out-of-state court order is to be enforced even if the holder of that order would not be eligible for protection under State law.

II. Review of New Jersey Domestic Violence Procedure

Let's examine these two provisions. In New Jersey, law enforcement officers will not have many of the problems law enforcement officers will face in other states. The New Jersey definition of a victim of domestic violence is more extensive than that of many states. Under New Jersey law, a person may be considered a victim of domestic violence as follows:

- A. **Victim of domestic violence** means a person protected under the domestic violence act and includes any person
- who is 18 years of age or older, or
 - who is an emancipated minor, and
who has been subjected to domestic violence by a
 - ✓ spouse
 - ✓ former spouse
 - ✓ any other person who is a present or former household member, or
 - ✓ any person with whom the victim has had a dating relationship, or
 - ✓ any person whom the victim anticipates having a child in common because the victim or abuser is pregnant
- or
- anyone who, regardless of age, has been subjected to domestic violence by a person:
 - ✓ with whom the victim has a child in common, or
 - ✓ with whom the victim anticipates having a child in common, because the victim or abuser is pregnant
- or
- anyone who, regardless of age, has been subjected to domestic violence by a person with whom the victim has had a dating relationship.

N.J.S.A. 2C:25-19

For more detailed information, see
Legal Aspects of Domestic Violence,
Module 2,
In-Service Training
for Police Officers,
Division of Criminal
Justice .

- B. If a person who qualifies as a victim of domestic violence in New Jersey had obtained a final restraining order, that order would have to be enforced in any other state. For example, New Jersey has a dating relationship classification; many states do not. If the person had obtained the court order because of the dating relationship and the person was in another state that did not have a dating relationship provision, that state would be required to honor the New Jersey restraining order and enforce the provisions of that order just as if that state had issued the order.

This federal law should not create many difficulties for law enforcement officers. If a victim of domestic violence has what appears to be a valid restraining order, the officer should enforce the terms of the order. The officer need not know the laws of the state which issued the restraining order.

In many cases, when law enforcement officers in this State will get involved with an out-of-state restraining order, there will be a need for immediate action by police to protect the victim. In non-emergent situations, it will be up to the courts to determine if an out-of-state victim of domestic violence should be entitled to relief.

Points to Emphasize:

- The definition of a victim of domestic violence in New Jersey is more extensive than that of other states. Not many, if any, out-of-state orders would have a broader classification of domestic violence victim.
- Law enforcement officers do not have to know the laws of the state issuing the domestic violence order. If the order appears to be facially valid, the officers should enforce it.

III. A Close Look at Definitions

- A. **Out-of-state orders.** Domestic violence orders may be entitled
- restraining order
 - orders of protection
 - abuse prevention order
 - Stay away orders

Not only may the names of the forms be different from state to state, the layout of the forms will be different. Each state will have its own peculiar format of the forms. In some states, the court order may be one or two pages. In New Jersey, it is four pages.

Another important factor that law enforcement officers must be familiar with is the duration of the court order. In New Jersey a final restraining order has no expiration date. This means that the order is valid until the order is vacated or modified by a court. In Pennsylvania, a final order is valid only for one year; in New York, a final restraining order is valid for five years.

When an officer is confronted with a domestic violence order from another state, the officer must carefully examine the order to determine whether the order remains valid

B. Mutual Order of Protection.

A mutual order of protection is a single court order entered against both parties listed on the order. This single court order would require both parties to abide by certain conditions of the order.

Under the federal law, mutual orders of protection are discouraged. In New Jersey these orders are prohibited by law. A law enforcement officer will rarely encounter a mutual order of protection.

In some cases, both parties will have restraining orders against each other. Officers must keep in mind that a restraining order only directs the defendant to refrain from certain conduct; it does not direct the applicant to refrain from any conduct. Consequently, in some cases the woman will obtain a no-contact order against her estranged husband and the man will obtain a no-contact order against his estranged wife. This is not a mutual order of protection.

C. Emergency situations.

This category includes incidents which require immediate action by the law enforcement officer to protect the victim against violent behavior, threats or violations of a no-contact order.

D. **Non-emergency situations.**

This category includes incidents where there is a request for enforcement of such provisions as

- child support
- changes in visitation
- or any other modification or enforcement request that did not involve violent behavior, threats or a violation of a no-contact order.

Points to Emphasize:

- Each state will have its own form of domestic violence order. The names may be different but the purpose is the same: to restrain the defendant from certain conduct.
- Officers must carefully examine an out-of-state court order to determine whether the order remains valid. Only New Jersey and Washington have lifetime orders.

IV. **Procedures for Responding Officers**

A. **Emergency situations.**

The out-of-state restraining order or order of protection should be presumed valid by the responding officers.

The officers primary responsibility is to ensure the safety of the holder of the out-of-state order and, secondarily, to verify the validity of the order.

Law enforcement officers are expected to protect victims of criminal offenses, regardless whether the victim is a resident of New Jersey or any other state or country.

If the officers respond to a domestic violence call and determine that the actor had committed a criminal offense upon the victim, the officers should follow established police procedure in making an arrest.

For example, if the victim had been assaulted by the actor and the officers see signs of injury, the officers must arrest the actor for the assault pursuant to *N.J.S.A. 2C:25-21a*.

In addition, if the victim showed the officers an order of protection from another state which barred the actor from having any contact with the victim, the officers should charge the actor with contempt, *N.J.S.A. 2C:29-9a*, if the officers determine that the court order appears valid on its face.

However, if no immediate criminal offense had been committed by the actor but the victim has an order of protection issued by another state, the officers should determine whether the court order appears valid on its face. If the order appears to be facially valid, the officers should arrest the actor on a charge of contempt, *N.J.S.A. 2C:29-9a* for violating the no-contact provision of the order.

Points to Emphasize:

- An out-of-state restraining order or order of protection should be presumed valid by the responding officers.
- An officer's primary responsibility is to ensure the safety of a victim of domestic violence.
- All persons within this State are entitled to the protections of the State laws whether they are residents or travelers through the State.
- If officers responding to a domestic violence call conclude that a person has violated New Jersey law, the officers should arrest that person. If that person violated provisions of an out-of-state court order, the officers should also charge the actor with contempt.
- If no criminal offense was committed other than a violation of an out-of-state court order, the officer should arrest the actor and charge that person with contempt for violating the no-contact order.

V. How to tell if a court order is facially valid?

- A. An out-of-state order of protection should be considered valid if:
- The order contains the names of the correct parties, and
 - the order has not expired
 - the victim has informed the officers that the named defendant had appeared at the court hearing when the order was granted or had notice to appear in court but did not show up.

B. Defects on the face of the order, such as boxes indicating service not checked, do not invalidate the enforcement of the order. In such cases, the officer should ask the victim about the apparent defect and should include this information in the officers incident report.

Points to Emphasize:

- An out-of-state restraining order or order of protection should be considered valid:
 - ✓ the order contains the names of the correct parties
 - ✓ the order has not expired
 - ✓ the victim has informed the officers that the named defendant either appeared at the court hearing or had notice of it.
 - Defects on the face of the order do not invalidate the order. Officers should ask the victim about the apparent defects.
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VI. What If the Victim Does Not Have a Copy of the Restraining Order or the Apparent Defects on the Order Make the Validity of the Order Questionable?

A. In some cases, a victim may inform the responding officers that she has a restraining order against the actor but will not be able to produce a copy of the order. In some cases, the out-of-state court order may have apparent defects which would cause a reasonable officer to question its authenticity.

Some states do not have central registries where domestic violence orders are recorded. Thus, it may be almost impossible for the officers to immediately determine whether a valid order exists. However, this does not mean that the officer is powerless to act or that the officer should ignore the victim's call.

B. If the parties meet the victim and defendant criteria of the New Jersey Domestic Violence Act, the officer should determine whether any of the mandatory arrest provisions contained in *N.J.S.A. 2C:25-21a* had occurred, such as:

New Jersey has a Domestic Violence Central Registry which allows law enforcement officers access to information about domestic violence cases within the State

- signs of injury, or
 - a weapon was involved in the act of domestic violence
- C. Where there had been an injury, the officer should determine whether the injury meets the criteria of being a "significant bodily injury" which is a third degree crime.

This significant bodily injury classification provides a mid range between the criteria for simple assault, which basically is pain, and aggravated assault, which basically is a serious and permanent injury. Significant bodily injury is defined as meaning:

bodily injury which creates a temporary loss of the function of any bodily member or organ or temporary loss of any one of the five senses.¹¹

This assault provision provides:

Attempts to cause significant bodily injury to another or causes significant bodily injury purposely or knowingly or, under circumstances manifesting extreme indifference to the value of human life reckless causes such significant bodily injury.¹²

- D. Where there is no probable cause for the officer to make a mandatory arrest, the officer should consider whether other criminal offenses had been committed. For example, the officer should keep in mind the elements for harassment, *N.J.S.A. 2C:33-4*, which prohibits a multitude of activities, such as:
- making communications anonymously or at extremely inconvenient hours, or in offensive coarse language, or any other manner likely to cause annoyance or alarm;
 - subjecting another person to striking, kicking, shoving, or other offensive touching, or threatening to do so, or
 - engaging in any other course of alarming conduct or of repeatedly committing acts with purpose to alarm or seriously annoy such other person.
- E. If the actor is at the premises of the victim, the officer may be able to charge the actor with being a defiant trespasser. The officer should ask the victim if the victim had ordered the actor to leave the property. The elements for being a defiant trespasser are:

A person is a defiant trespasser if that person knowing that he or she is not permitted to do so enters or remains in any place as to which notice against trespass is given by actual communication to the actor.¹³

Thus, if the victim has told the actor to leave the property and the actor refused and is at the scene, the officers should arrest the actor.

- F. If an emergent situation exists and the victim wants a temporary restraining order, the officer should follow standard procedure for assisting the victim in obtaining a New Jersey temporary restraining order.

Points to Emphasize:

- Many states do not have central registries where domestic violence orders are recorded.
- If the out-of-state order appears facially valid, the officers must enforce it.
- If the actor has committed a violation of New Jersey law, the officer should arrest the actor.
- Officers should keep in mind the elements for harassment, *N.J.S.A. 2C:33-4*, and defiant trespasser, *N.J.S.A. 2C:18-3b*, which may provide a basis for charging the actor.
- Officers must protect the victim against immediate violent behavior, threats or violations of a no-contact order

VII. Non-emergent Situations

If a victim wants to enforce a provision of a restraining order or an order of protection that does not require immediate action by the law enforcement officer, the officer should refer the victim to the appropriate court for relief.

Some examples of non-emergent situations include:

- a request for enforcement of child support
- changes in visitation

If the victim has moved into New Jersey from another state, the officer should refer the victim to the Family Part of Superior Court in the county where the victim is then located. If the victim is only temporarily in this State, the officer should refer the victim to the court where the victim is then residing.

Point to Emphasize:

- In non-emergent situations, officers should refer a victim of domestic violence with an out-of-state restraining order to the appropriate court for relief.

VIII. Mutual Orders of Protection

- A. The plaintiff of a mutual order of protection from another state is entitled to full faith and credit in this State to the same degree as if the order had been issued solely on the plaintiff's behalf. The defendant of a mutual order of protection from another state would be entitled to relief if:
- the defendant had filed a written pleading seeking this protective order, and
 - the court had made specific findings on the record that the defendant was entitled to the order.
- B. The enforcement of a mutual order of protection by a defendant should be a relatively rare occurrence for a law enforcement officer. In non-emergent situations, the defendant should be referred to the appropriate court for relief.

Point to Emphasize:

- Officers will rarely encounter a mutual order of protection. If they do, they should enforce the provisions granting relief to the victim.

IX. Violations of Federal Law

When responding to a domestic violence incident involving an out-of-state order of protection or restraining order, law enforcement officers should determine whether any federal laws were violated by the actor.

Note: An officer should never directly charge a violation of federal law since the officer does not have jurisdiction.

If the officer determines that a federal law was violated, the officer should report this fact to the designated Assistant County Prosecutor who will determine whether the case should be referred to the U.S. Attorney's Office for appropriate action.

Federal laws involving domestic violence are:

A. Interstate domestic violence.

It is a violation of federal law for a person to:

- travel across a State line with the intent to injure, harass, or intimidate that person's spouse or intimate partner.¹⁴
- to cause a spouse or intimate partner to cross a State line by force, coercion, duress, or fraud and, in the course or as a result of that conduct to, intentionally commit a crime of violence and thereby cause bodily injury to the person's spouse or intimate partner.¹⁵

B. Interstate violation of a protection order.

It is a violation of federal law for a person to travel across a State line with the intent to engage in conduct that:

- violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued; or
- would violate the above if the conduct occurred in the jurisdiction in which the order was issued, and
- subsequently engaged in such conduct.¹⁶

It is a violation of federal law for a person cause a spouse or intimate partner to cross a State line by force, coercion, duress, or fraud, and in the course or as a result of that conduct, intentionally commits an act that injures the person's spouse or intimate partner in violation of a valid protection order issued by a State.¹⁷

Points to Emphasize:

- It is a federal offense for a person to
 - ✓ travel across state lines to commit an act of domestic violence
 - ✓ cause a spouse or intimate partner to cross state lines and, as a result, the actor commits an act of domestic violence
 - ✓ travel across state lines to violate provisions of an order of protection
 - ✓ cause a spouse or intimate partner to cross state lines and, as a result, the actor commits an act of domestic violence in violation of a court order
 - If an officer determines that a federal law was violated, the officer should report this to the designated assistant county prosecutor who will determine if the matter should be referred to the U.S. Attorney's office.
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X. Immunity from Civil Liability

State law provides a law enforcement officer with immunity from civil liability when that officer takes action in a domestic violence incident. The law states that the officer shall not be held liable in any civil action brought by any party for an arrest based on probable cause when that officer in good faith enforced a court order.¹⁸

A law enforcement officer enforcing the out-of-state court order in good faith may also have qualified immunity to federal actions brought under 42 *U.S.C.A.* 1983.

Points to Emphasize:

- State law gives officers immunity from civil liability where the officers in good faith enforced a court order or made an arrest based on probable cause.
 - Officers also will have a qualified immunity if an action is brought in federal court.
 - This immunity applies to the enforcement of out-of-state court orders where the officers determine that the order is facially valid.
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XI. Summary

Law enforcement officers should keep in mind that when a woman leaves a battering relationship, she is at a 75% greater risk of being killed by the batterer than a woman who remains in such a relationship.¹⁹ One study reported that 73% of battered women seeking emergency medical treatment suffered injuries after leaving the batterer.²⁰ In some cases, the woman may leave the jurisdiction so that the batterer cannot find her.

A primary duty of law enforcement officers in responding to a domestic violence call is to protect the victim. When officers respond to a domestic violence call involving an out-of-state order, the officers must keep in mind that in many cases the potential for violence may be intensified. The batterer may have hunted down his victim by contacting her friends and relatives; he may have secretly followed her to her new location. It is important that the officer in such cases provide the victim with all the protection that the law provides.

ⁱThe New Jersey Guidelines for the Enforcement of Out-of-State Restraining Orders or Orders of Protection in Domestic Violence Cases are based on the Police Training Protocol used by the New York State Office for the Prevention of Domestic Violence in its law enforcement training programs. See Lutz, Victoria L. and Bonomolo, Cara M., *How New York Should Implement the Federal Full Faith and Credit Guarantee for Out of State Orders of Protection*, 16 Pace L. Rev. 1, 2/96. Victoria L. Lutz is director of the Pace University Battered Women's Justice Center.

ⁱⁱ In this training module, the victim of domestic violence will be referred to as a woman because in more than 90% of domestic violence cases the injured party is a woman. See Caroline W. Harlow, U.S. Department of Justice, *Female Victims of Violent Crime 1* (1991). Men can be and are victims of domestic violence and are entitled to the same protections as women under the domestic violence laws of this nation and State.

ⁱⁱⁱ Hart, Barbara, *National Coalition Against Domestic Violence* 1988

^{iv} Lutz, Victoria L. and Bonomolo, Cara M., *How New York Should Implement the Federal Full Faith and Credit Guarantee for Out of State Orders of Protection*, 16 Pace L. Review 1, 2/96.

^v Klein, Catherine F., *Full Faith and Credit: Interstate Enforcement of Protection Orders Under the Violence Against Women Act of 1994*, *Family Law Quarterly*, Volume 29, Number 2, Summer 1995

^{vi}The Violence Against Women Act of 1994 is codified in 8 U.S.C.A., 18 U.S.C.A., and 42 U.S.C.A.

⁷ 18 U.S.C.A. 2265

⁸ See footnote 4, *supra*

⁹ See footnote 4, *supra*

¹⁰ See footnote 5, *supra*

¹¹ N.J.S.A. 2C:11-1d

¹² N.J.S.A. 2C:12-1b(7). This assault provision was enacted into law on January 5, 1996.

¹³ N.J.S.A. 2C:18-3b

¹⁴ 18 U.S.C.A. 2261(a)(1)

¹⁵ 18 U.S.C.A. 2261(a)(2)

¹⁶ 18 U.S.C.A. 2262(a)(1)

¹⁷ 18 U.S.C.A. 2262(a)(2)

¹⁸ N.J.S.A. 2C:25-22

¹⁹ See footnote 3

²⁰ *Domestic Abuse*, Metro Nashville Police Department, citing Starks et al, 1981