

DOMESTIC VIOLENCE

Guidelines for the Enforcement of Out-of-State Restraining Orders or Orders of Protection in Domestic Violence Cases

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Introduction: The Full Faith and Credit provision of the Violence Against Women Act (VAWA), 18 U.S.C.A. 2265, requires that out-of-state domestic violence restraining orders or orders of protection be recognized and enforced as if they were orders of a New Jersey court. The out-of-state order is to be enforced in this State even if

The victim would not be eligible for a restraining order or an order of protection in this State.

B. The foreign order grants the named applicant more relief than the person would have received under New Jersey law.

I. Definitions

A. Out-of-State domestic violence restraining orders (also known as "foreign") orders of protection included any court order issued by any other state, Indian tribe, territory or possession of the United States, Puerto Rico or the District of Columbia, whether or not the order is similar to a restraining order issued in the State of New Jersey.

B. Mutual Order of Protection is a single court order entered against both parties and requiring both parties to abide by the conditions of the order. Under the VAWA, mutual orders of protection are discouraged. Under New Jersey law, mutual orders of protection are prohibited. However, each party may obtain a separate restraining order against the other party. This would not be considered a mutual order of protection.

C. Emergency Situation would include a situation that presents a need for immediate action by the police to protect the victim against violent behavior, threats or violations of a non-contact order.

D. Non-emergency Situation would include a situation where there is a request for enforcement of child support, changes in visitation or any other modification or enforcement request that does not involve violent behavior, threats or a violation of a non-contact order.

II. Responding Officers Procedures

A. Emergency Situations

In an emergency situation, the restraining order or order of protection should be presumed valid when presented to an officer. The primary responsibility of the officer should be to ensure the safety of the holder of the out-of-state order and, secondarily, to verify the validity of the order.

1. If the named defendant in the court order committed a criminal offense under New Jersey law against the victim and appeared to have violated the court order, the officer should arrest the defendant and sign the criminal complaint against the defendant for the criminal offense. The officer also should charge the defendant with contempt, N.J.S.A. 2C:29-9a.

2. If the named defendant committed no criminal offense but appears to be in violation of the out-of-state no-contact order, the officer should determine whether the order appears to be facially valid.

a. If the court order appears to be facially valid, the officer should arrest the defendant for violating the terms of the court order. The defendant should be charged with contempt, N.J.S.A. 2C:29-9a.

b. An order will be considered facially valid if:

(1) the order contains the names of the correct parties, and

(2) the order has not expired.

(3) the victim informs the officer that the named defendant appeared at the court hearing or had notice to appear in court when the court order was issued.

c. In most states a restraining order or an order of protection has a specified expiration date. The officer must review the court order to determine whether it remains valid. Only two states have court orders with no stated expiration dates -- New Jersey and Washington. In these two states, a final restraining order remains in effect until modified or vacated by a court.

d. Defects on the face of the order, such as boxes indicating no service checked, do not invalidate the enforcement of the order. In such cases, the officer should ask the victim about the apparent defects to determine whether the defendant had been served with the order or has knowledge that the order was issued.

3. If the victim does not have a copy of the out-of-state court order and the officer cannot determine the existence of the court order or if the court order contains an apparent defect which would cause a reasonable officer to question its authenticity, the officer should

a. arrest the actor if the criteria of the New Jersey Domestic Violence Act, N.J.S.A. 2C:25-17 et seq., had been met and if a criminal offense had been committed, and/or

b. explain to the victim the procedure to obtain a domestic violence restraining order in New Jersey. In an emergent situation, the officer should assist the victim in obtaining a temporary restraining order in accordance with departmental procedures.

B. Non-Emergency Situations

In a non-emergency situation, the officer should refer the victim to the appropriate court so the victim may seek to obtain appropriate relief in accordance with the foreign restraining order or order of protection. If the victim had 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 New Jersey, the officer should refer the victim to the court where the victim is then residing.

C. Mutual Orders of Protection

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:

1. The defendant had filed a written pleading seeking this protective order, and
2. The court had made specific findings on the record that the defendant was entitled to the order.

Note: The enforcement of a mutual order of protection by a defendant should be a relatively rare occurrence. In non-emergent situations, the defendant should be referred to the appropriate court for relief.

III. Violations of Federal Law

If the responding officer determines that the defendant in the out-of-state restraining order or order of protection traveled across a state line with the intent to engage in conduct that violates a portion of the court order or to injure, harass, or intimidate the named victim in the court order, 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 pursuant to 18 U.S.C.A. 2261 and 2262.

Note: An officer should not charge a violation of federal law since the officer does not have federal jurisdiction.

IV. Immunity from Civil Liability

N.J.S.A. 2C:25-22 provides that a law enforcement 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. Under the qualified immunity doctrine, a law enforcement officer may also assert immunity to federal actions brought under 42 U.S.C.A. 1983.