

## **6.1 ENFORCEMENT AND MODIFICATION**

- 6.1.1 The enforcement of a TRO or FRO occurs when the plaintiff seeks to have the defendant comply with an existing order. A modification occurs when one party seeks to add or change provisions to an existing order.
- 6.1.2 Enforcement of TRO and FRO is governed by *N.J.S.A. 2C:25-30* and *2C:29-9b*, depending on the conduct and the provision violated. All relief contained in Part I of the restraining order can be enforced by way of criminal or civil remedies. All relief contained in Part II must be enforced by civil remedies, i.e., by filing an application with the Superior Court, Family Part.
- 6.1.3 Violations of *N.J.S.A. 2C:25-29(b)* (which covers Part II relief) includes:
- A. an order for parenting time;
  - B. an order requiring the defendant to pay monetary compensation;
  - C. an order requiring the defendant to receive professional domestic violence counseling;
  - D. an order requiring the defendant to make rent/mortgage payments; and/or
  - E. an order granting either party temporary possession of personal property.

These may be enforced in a civil action initiated by the plaintiff, generally under *Rule* 1:10-3 and *Rule* 5:3-7 by way of motion, affidavit, or in emergent circumstances, **an** order to show cause.

- 6.1.4 A defendant who “purposely or knowingly violates any provision” of a **TRO** or **FRO** is guilty of a crime of the fourth degree if the conduct that constitutes the violation also constitutes a crime or disorderly persons offense under *N.J.S.A. 2C:29-9(b)*. In all other cases, the defendant is guilty of a disorderly persons offense if that person knowingly violates an order entered under the provisions of the PDVA.
- 6.1.5 These distinctions apply even when the restraining order is no longer in effect, so long as the conduct which constitutes the offense occurred while the order, temporary or final, was in effect.
- 6.1.6 In connection with enforcement applications or reports of violations by the victim, the victim advocate or the Victim Witness Unit should be involved in the interview, whenever possible. If the advocate is not available, the victim should be given the victim advocate’s card and told to contact her/him prior to the hearing.

## **6.2 CRIMINAL CONTEMPT**

See section III.

### 6.3 **ENFORCEMENT OF LITIGANT'S RIGHTS PROCEEDINGS**

- 6.3.1 When a plaintiff alleges that the defendant violated a portion of Part 11 of a restraining order (i.e., pertaining to parenting time, monetary compensation, professional domestic violence counseling, rent or mortgage payments or possession of personal property), the plaintiff should be directed to Family Part, during normal court hours to file an application (by motion or affidavit) to enforce these provisions. A domestic violence advocate should be available to speak to the plaintiff.
- 6.3.2 The designated domestic violence staff person should speak to the plaintiff to determine (a) whether a restraining order violation has occurred; (b) if the person is seeking the type of relief that civil enforcement can provide; and (c) if another type of procedure is more appropriate. If the plaintiff is seeking enforcement of issues in Part I (other than parenting time, monetary compensation, receipt of professional domestic violence counseling, rent or mortgage payments or possession of personal property), staff should explain the criminal procedures regarding filing criminal complaints and advise the party of the option to initiate criminal procedures with the appropriate police department or the prosecutor's office. In addition, plaintiff should be told of the option to have any of these issues addressed by Family Court.
- 6.3.3 When a defendant alleges that the plaintiff has not abided by the terms of a restraining order, for example, parenting time or possession of personal property, the defendant should be directed to Family Part, during normal court hours to file an application (by motion or affidavit) to enforce these provisions.
- 6.3.4 If the issue is appropriate for civil enforcement, the court, should provide forms to the plaintiff to prepare an application to the court (motion or affidavit) pursuant to **Rule 1:10-3** or **Rule 5:3-7**. Where available, the plaintiff should be assisted by the victim advocate or victim witness representative. If the issue is the modification or enforcement of child support, the matter can be scheduled before a Child Support Hearing Officer (CSHO), pursuant to CSHOP Standard 7 (See Appendix 20). Otherwise, the matter should be listed before the judge who granted the order, where possible. The matter should be reopened using the same docket number and case file. The judge hearing the matter should have the complete file.
- 6.3.5 If the litigant (either plaintiff or defendant) believes that the matter is emergent, the domestic violence staff person should provide the necessary forms to assist the litigant in preparing an Order to Show Cause (OTSC), which should be presented to the judge forthwith to determine whether the request is emergent. Whenever possible, the judge who issued the original order should review the proposed OTSC, grant any or all relief, and set a return date, or deny the application. If a return date is set for the OTSC, the matter should be scheduled on the next designated domestic violence enforcement day for which regular notice can be arranged. If the OTSC is denied, the litigant can be referred back to intake to file a motion/affidavit.

- 6.3.6 After the matter is reopened and processed, a request for an OTSC shall be brought to the judge **as** quickly **as** possible, so that the OTSC can be signed if the judge is satisfied with the sufficiency of the application and a return date for the enforcement hearing can be set on short notice. Wherever possible, the judge who issued the original order should review the proposed OTSC. That judge can also hold the enforcement hearing. Motions made pursuant to *Rule* 1:10-3 should be returnable for the next designated domestic violence enforcement day for which regular notice can be arranged, but in any event no longer than **two** weeks.
- 6.3.7 The moving party will receive a copy of the OTSC while in court and the other party shall be served with the OTSC, motion or affidavit pursuant to court rules. Service of papers and notice of hearing shall be prepared by Family Part. Family ~~Part~~ staff should ensure that the plaintiffs address is not disclosed to the defendant. The notice should state to the responding party that non-appearance may result in the requested relief being granted.
- 6.3.8 Any modifications granted by the court should be recorded in a new final order that also includes all the non-amended prior relief, recorded on an Amended FRO. This must be served in the same manner as ~~an~~ FRO. This order should also specifically set forth all prior relief which was not modified, and not just refer to the former order, to ensure that there is only one final order that sets **forth** all of the relief.

## 6.4 CONTEMPT IN SUPERIOR COURT

### Processing of 2C:29-9(b) Complaints

#### 6.4.1 **When a Defendant has been arrested for Violating a TRO or FRO**

Upon allegation of a violation of a restraining order, a warrant should be issued immediately and the CDR should be completed at that time. Upon arrest, the CDR-2 should be immediately forwarded to the Criminal Division, the Prosecutor's Office and as otherwise described at the bottom of the CDR. Initial screening by the Assistant Prosecutor assigned to the Domestic Violence unit should be at the first appearance, or no later than the plea hearing date. If the contempt is non-indictable and/or downgraded, it shall be sent to Family Court and docketed as an FO case. This should be done at the first appearance.

#### 6.4.2 **Bail**

- A. An initial bail must be set by a Superior Court Judge pursuant to *Rule* 3:26-2. The CDR should be provided, along with the DV Incident/Police Report.
- B. During regular court hours, bail should be set by a Family Part Judge, who will have access to the underlying FV file along with other relevant FV, FO and FD files, and the FACTS printout regarding other Family Court history.

- C. When the Superior Court is not in session, the on-call bail judge should be contacted and provided with all available information on the defendant and the underlying case information from the DVCR.

NOTE: If the contempt has been initially screened as a disorderly persons offense, bail may be set by a Municipal Court Judge if the Assignment Judge in that vicinage has issued a directive/order allowing this practice.

- D. The CDR shall serve as the moving document **as** the case proceeds through the court. In Municipal Court, all bail decisions are reflected on the **CDR**, along with all screening and downgrade decisions, which must be dated. Conditions of bail or release such as prohibitions against contact should be noted in the appropriate section of the CDR as well. (In Superior Court, Criminal Division, there are separate court orders for bail decisions.)

#### **6.4.3 Responsibility for arraignments/bail reviews/first appearances**

Responsibility for arraignments/bail reviews/first appearances should rest with the Division or **Part** of the Superior Court that has jurisdiction over the case at that time, either the Family Part or in Criminal Division so long as the Assistant Prosecutor assigned to the Domestic Violence Unit is available. Daily jail lists should be provided to both the Criminal Division and the Family Part each morning with *N.J.S.A. 2C:29-9b* indictable and non-indictable violations identified as such. The judge conducting the hearing should be provided with pertinent information from the underlying FV file as required by *N.J.S.A. 2C:29-26e*.

The prescreening of matters, to determine whether the matter is indictable is strongly encouraged where at all possible.

#### **6.4.4 Scheduling of Subsequent Proceedings**

**As contempt cases are high impact offenses, each county Prosecutor should screen these cases as expeditiously as possible.**

- A. Following arrest, defendants should be given the CDR with the first appearance/arraignment date noted in the appropriate section, along with any other Notice to Appear, where applicable. Thus, even if bail is posted, the defendant has the date of the first appearance/arraignment.
- B. If the defendant is in custody the first appearance and bail review must be scheduled within 72 hours in accordance with *Rule 3:4-2*.
- C. Where defendant is not incarcerated, the first appearance/arraignment/case management conference should be scheduled no later than **20** days after the issuance of a contempt complaint. Notice of the court date should be sent to the

defendant by the appropriate court.

- D. An assistant prosecutor should be required to appear at the first appearance/arraignment and should provide the court with a preliminary determination as to whether the case is being referred to the Criminal Division **as an** indictable case or is being graded/downgraded and heard in the Family **Part**. Scheduling of subsequent hearings, including bail review hearings at regular intervals, is the responsibility of the **Part** or Division in which the case will be heard.
- E. All contempt matters are subject to Speedy Trial Guidelines, and must be scheduled accordingly. There is a 90-day disposition guideline that applies as well in Family and Municipal Court.
- F. When the case is referred to the Family Part, the 5A (Financial Questionnaire to Establish Indigency) should be completed, counsel appointed and a pretrial conference scheduled at the first appearance/arraignment. These cases will then be docketed in FACTS, tracked accordingly and disposed within 90 days of docketing.

#### **6.4.6 Where there is more than one charge on a CDR -2**

- A. **If**, upon screening, there is a determination that there is no basis for a contempt charge, the companion charges may be referred to the Criminal or Municipal Court for disposition.
- B. Where the matter is docketed in Family Part, and there are both contempt and underlying charges, if the contempt is dismissed as part of a plea, the Family Part judge shall dispose of the underlying charge.
- C. The contempt charge and the underlying charge should never be bifurcated and heard by different courts.**
- D. After the bail review/first appearance, these matters must be promptly scheduled for a plea hearing/calendar. In Family Division, the plea hearing should be held within two weeks if the defendant is incarcerated, and within four weeks if the defendant is out on bail.
- E. At the plea hearing, the defendant should, after consultation with counsel, enter a plea.

- F. Where defendant pleads guilty, [s]he should be sentenced immediately, unless the court needs additional information and adjourns the sentencing to a date certain.
- G. Where a defendant pleads not guilty, a non-jury trial must be scheduled expeditiously before a Family ~~Part~~ Judge, keeping the 90-day disposition guideline in mind.
- H. At the trial, the Prosecutors' Office will present the case against the defendant. Discovery must be obtained by the prosecutor. Subpoenas for witnesses must be issued by the prosecutor.
- I. At sentencing, the disposition must be noted in the FO file and entered into FACTS.
- J. The completed CDR-2 and any ancillary paperwork must immediately be forwarded by Family ~~Part~~ for routing of orders of commitment, probation, fines, VCCB payments to the appropriate case management clerical or probation office.

#### 6.4.7 Incarceration of Sole Caretaker of Children

Whenever a person has been convicted of a violation which will result in incarceration, the court must follow the procedures set forth in *N.J.S.A. 2C:44-6.2, et.seq.*, and Directives ~~4-04~~ and 8-95.

## 7.1 FEDERAL STATUTORY OVERVIEW

- 7.1.1 The Full Faith and Credit provision of the Violence Against Women Act (VAWA), 18 U.S.C.A. 2265, *et seq.*, requires states and Indian tribes to enforce protection orders issued by other states and Indian tribes as if the orders had been issued by the non-issuing/enforcing state or Indian tribe. In addition, an enforcing state must enforce a protection order from another state even if the petitioner would not be eligible for a protection order in the enforcing state.
- 7.1.2 Additionally, all orders of protection shall have the same force and effect on military installations as such order has within the jurisdiction of the court that issued the order under the Armed Forces Domestic Security Act, 10 U.S.C. 1561a.

## 7.2 PROTECTION ORDERS COVERED BY §2265

### 7.2.1 Definition of Protection Order

The Full Faith and Credit provision applies to any injunction or other order issued for the purpose of preventing violent or threatening acts, or harassment against, contact or communication with, or physical proximity to another person, including any temporary or final order issued by a civil and criminal court whether obtained by filing an independent action or as apendente Zite order in another proceeding so long as any civil order was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking the protection. In other words, it extends to temporary and **final**, civil and criminal protection orders (e.g., stay away or no-contact orders that are part of a defendant's conditions of release or bail).

### 7.2.2 Final and *Ex Parte* Orders

- A. Every state, subdivision thereof, and Indian tribe must accord full faith and credit to both final and **ex parte** protection orders.
- B. In terms of final protection orders, the statute provides that a final order must be enforced if:
- (1) it was issued by a court that had personal and subject matter jurisdiction to issue the order, and
  - (2) the respondent was provided with reasonable notice and the opportunity to be heard sufficient to protect that person's right to due process.
- C. In the case of **ex parte** orders, notice and opportunity to be heard must be provided within the time required by state or tribal law and, in any event, within a reasonable period **of** time after the order is issued, sufficient to protect the opposing party's right to due process.

## **7.23 Mutual Protection Orders**

Should the issuing court enter a protection order with prohibitions against both the respondent and the petitioner, only the provisions in favor of the petitioner (those constraining the respondent) are entitled to enforcement in another state, tribe, or territory unless:

- A. the respondent filed a separate petition or pleading seeking such an order, and
- B. the court made specific findings that both parties were entitled to such a protection order.

Pursuant to §2265, a court in a jurisdiction other than the jurisdiction that issued the order shall not enforce a mutual order against a petitioner unless the portions that impose prohibitions on the petitioner meet the above legal criteria.

## **7.3 NEW JERSEY LAW AND PROCEDURE**

**7.3.1** In May 2000, the New Jersey Judiciary adopted procedures to implement the registration of out of state orders (Appendix 21). The procedures include:

- A. Procedures for Family ~~Part~~ staff to follow to register the orders.
- B. FACTS codes and procedures (part of the FACTS FV Docket User's Guide distributed by the Automated Trial Court Systems Unit).
- C. Certification forms for incoming orders and for outgoing New Jersey orders.

**7.3.2** The procedures accommodate the out-of-state order's expiration date in FACTS and the practice of other states concerning certification for Restraining Orders. The primary benefit to registration for the victim is that the order will be on the statewide DVCR to which police throughout the state have access on an immediate, round-the-clock basis.

**7.3.3** These procedures:

- A. Establish these registered cases without adding new cases to the Family Part statistical report;
- B. Accommodate the expiration date of out-of-state orders;
- C. Identify out-of-state orders to users, particularly law enforcement users of the DVCR;
- D. Prohibit an out-of-state order to be reopened or modified; and



- E. Continue to require that Full Faith and Credit be honored by law enforcement and the courts on those orders that have not been registered.

## **7.4 PROCESS**

- 7.4.1 The victim (plaintiff) who elects to register **an** out-of-state restraining order will present the order at a county Family **Fact** Intake Domestic Violence Unit. The plaintiff will complete a Victim Information Sheet and complete **an** Out-of-State certification form (See Appendix 21).
- 7.4.2 The Domestic Violence Unit will review the order, certification and Victim Information Sheet. The staff member will call the issuing court immediately or within one business day. The staff member will send by facsimile the order and certification form to the issuing court and request confirmation of the order as presented by return fax. The Family Division Manager or the Domestic Violence Team Leader may review the contact with the issuing court to resolve questions concerning confirmation.
- 7.4.3 Upon Confirmation, the staff member will complete the confirmation form, which will allow for the establishment and docketing of the case on **FACTS**.
- 7.4.4 The establishment process will include:
  - A. A new initiating document, the OUT-OF-STATE DV RO, entered in the initiating document field, will be combined with a case status reason code that identifies the case as an Out-of-State Order;
  - B. The field MUNICIPALITY OF OFFENSE becomes a required field with a change from numeric to alphanumeric to allow the state to be identified, e.g. A9901 for an Out-of-State order **from** Pennsylvania;
  - C. All OUT-OF-STATE DV RO initiating document cases would be ignored in the statistical count and cannot be reopened.
- 7.4.5 The expiration date will be identified in the system and appear on the registry based on the use of a relief code that is unique to this case type. The expiration date will be entered by the user and appear in the registry in the COMMENTS field.
- 7.4.6 Upon completion of case establishment, the order will be stamped with a statement confirming that it has been verified and registered **as** of the case establishment date and providing the New Jersey docket number. The victim/plaintiff should be provided with the order, a copy faxed to the police departments identified by the plaintiff, and a copy placed in the Family **Fact** file that was created when the system assigned the New Jersey number as part of the registration process.

**7.4.7 The Attorney General’s guidelines to law enforcement officers state that the registration of an order is not required to enforce the order.** The Division of Criminal Justice has assured that Full Faith and Credit will be emphasized in all police training to continue protection of all victims, regardless of whether they have sought the additional assurance of recording their out-of-state order with New Jersey.

## **7.5 OUTGOING ORDERS**

- 7.5.1 All Final and Temporary restraining orders contain language concerning the Full Faith and Credit qualification of those orders under the Federal VAWA statute. **As** a further aid to victims, the federal VAWA office has promulgated a form of Certification, if completed by the issuing court, intended to encourage the enforcement of these orders in all states. At this time, it is not a recommended practice to provide this certification for orders issued on a routine basis. Rather, the form should be completed upon the request of a victim, or another state’s court or law enforcement agency that has requested verification of the New Jersey FRO. (See Appendix **21**.)
- 7.5.2 The recommended practice is for the court to provide the victim with a certified true copy of the FRO, with a raised seal, upon request of the victim.

## **DOMESTIC VIOLENCE WORKING GROUPS**

On September **24, 1991**, then Chief Justice Wilentz and Attorney General Del Tufo charged that each Presiding Judge and County Prosecutor convene or reconvene a County Domestic Violence Working Group to assist in the design of a county implementation and monitoring strategy, and provide **an** ongoing forum for identification and resolution of problems in the domestic violence prevention and protection process in each county. The Presiding Judge (or Family Part Judge, in a multi-county vicinage) and County Prosecutor should serve as co-chairpersons. The working group meetings are a productive resource for discussing domestic violence processes and procedures.

The **group** shall also consist of the Family Division Manager; Domestic Violence Team Leader; the DVHO; the Sheriff; the President of the Municipal Prosecutor's Association; the President of the County Chiefs' Association; a Criminal Division Liaison; a Municipal Court Liaison; the Director and Court Liaison of the local domestic violence program; a representative from each Municipal Court and County Prosecutor's Office (who handles domestic violence cases); the County Victim Witness Coordinator; the local batterer's group; DYFS; the County **Bar** Association Family Law Section; and any other appropriate service provider. Working Groups shall meet at least quarterly.