



NEW JERSEY LAW REVISION COMMISSION

Draft Final Report Relating to Uniform Interstate Enforcement of Domestic Violence Protection Orders Act December 5, 2016

The work of the New Jersey Law Revision Commission is only a recommendation until enacted.
Please consult the New Jersey statutes in order to determine the law of the State.

Please send comments concerning this report or direct any related inquiries, to:

Jayne J. Johnson, Esq., Counsel
New Jersey Law Revision Commission
153 Halsey Street, 7th Fl., Box 47016
Newark, New Jersey 07102
973-648-4575
(Fax) 973-648-3123
Email: jjj@njlrc.org
Web site: <http://www.njlrc.org>

Executive Summary

This Report discusses the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act (UIEDVPOA or the Uniform Act), which is designed to establish uniform procedures for enforcing out-of-state domestic violence protection orders. The Commission does not recommend enacting the Uniform Act in New Jersey at this time, in light of the existing Office of the New Jersey Attorney General Guidelines governing interstate enforcement of protective orders and the recent enactment of the Sexual Assault Survivor Protection Act of 2015, which largely address the issues contemplated by the Uniform Act.

Background

The goal of the Uniform Act is to provide procedures which offer full faith and credit protection, as required by the federal Violence Against Women Act (VAWA), to individuals who encounter or are threatened by sexual violence when they cross state lines.¹ In 1994, Congress passed the VAWA as a part of the Violent Crime Control and Law Enforcement Act “to respond both to the underlying attitude that this violence is somehow less serious than other crimes and to the resulting failure of our criminal justice system to address” domestic violence.² Congress amended the VAWA in 2000 to strengthen the statute by creating several additional provisions, notably establishing interstate domestic violence as a federal criminal offense.³

The VAWA was amended again in 2005, and most recently in 2013, Congress reauthorized the statute.⁴ The VAWA now consists of twelve titles with provisions addressing sexual violence on college and university campuses, dating violence, and stalking.⁵ The VAWA sets forth a multi-prong approach to address sexual violence, including penalty provisions, research and grant provisions, procedural measures, and training requirements.⁶

¹ UNIF. INTERSTATE ENFORCEMENT OF DOMESTIC VIOLENCE PROTECTION ORDERS ACT, [*hereinafter* UIEDVOPA], Act, http://www.uniformlaws.org/shared/docs/interstate%20enforcement%20of%20domestic%20violence%20protection%20orders/uiedvpoa_final_02.pdf; 42 U.S.C. §§ 13925-14045d., 18 U.S.C. §2265 (West 2016)(VAWA as amended).

²Pub. L. No. 103-322, Title I-XII, 108 Stat., 1902 (codified as amended in scattered sections of 8, 18, and 42 U.S.C.).

³ *Id.*

⁴ *Id.*; see also Dept. of Justice, Violence Against Women Office, *2013 Reauthorization of the VAWA*, available at <http://www.justice.gov/ovw/domestic-violence> (last visited Dec. 5, 2016) (VAWA 2013 established the Campus Sexual Violence Act (“SaVE Act”) provision, Section 304 which mandates: (1) reporting acts of domestic violence, dating violence and stalking, (2) adopt certain student discipline procedures, including students’ notice of rights; (3) train campus personnel concerning procedures to identify and address campus; the VAWA also recognizes tribes’ inherent power to exercise “special domestic violence criminal jurisdiction” (SDVCJ) over certain defendants, regardless of their Indian or non-Indian status, who commit acts of domestic violence or dating violence or violate certain protection orders in Indian country); <http://www.justice.gov/ovw/domestic-violence>.

⁵42 U.S.C. §§ 13925-14045d. (West 2016); Pub. L. No. 103-322, Title I-XII, 108 Stat., 1902 (codified as amended in scattered sections of 8, 18, and 42 U.S.C.).

⁶ *Id.*

A key component of the VAWA is § 2265, which extends full faith and credit protection to all duly issued protective orders by requiring states to enforce orders issued in other states.⁷ The full faith and credit provision of the VAWA serves as “an interstate passport to safety” for victims of sexual violence, ensuring that protection crosses with them over state lines.⁸ Pursuant to § 2265 of the VAWA, the enforcing state must honor the out-of-state protection order, even if the order could not be obtained in the enforcing state:⁹

(a) FULL FAITH AND CREDIT.—

Any protection order issued that is consistent with subsection (b) of this section by the court of one State, Indian tribe, or territory (the issuing State, Indian tribe, or territory) shall be accorded full faith and credit by the court of another State, Indian tribe, or territory (the enforcing State, Indian tribe, or territory) and enforced by the court and law enforcement personnel of the other State, Indian tribal government or Territory as if it were the order of the enforcing State or tribe.

(b) PROTECTION ORDER.— A protection order issued by a State, tribal, or territorial court is consistent with this subsection if —

(1) such court has jurisdiction over the parties and matter under the law of such State, Indian tribe, or territory; and

(2) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person’s right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by State, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent’s due process rights.

In July 2000, the Uniform Law Commission (ULC) promulgated the Uniform Act and recommended it for enactment in all states.¹⁰ The ULC was applauded for taking a bold step toward ensuring the safety of victims who cross state lines; but the Uniform Act was challenged as limiting the scope of the full faith and credit protection provided under the VAWA.¹¹ In

⁷ 18 U.S.C. §2265(a), (b) (2016).

⁸ Victoria L. Lutz and Cara M. Bonomolo, *How New York Should Implement the Federal Full Faith and Credit Guarantee for Out of State Orders of Protection*, 16 Pace L. Rev. 9, 10 (1996).

⁹ 18 U.S.C. §2265(a), (b) (2016).

¹⁰ UIEDVOPA, *Summary*, available at

<http://www.uniformlaws.org/ActSummary.aspx?title=Interstate%20Enforcement%20of%20Domestic%20Violence%20Protection%20Orders%20Act> (last visited Dec. 5, 2016).

¹¹ See Letter from K. King Burnett, Dir. ABA Comm’n. on Domestic Violence to the ULC (May 2, 2002)(on file with the ULC), available at

response to these and other concerns, the ULC amended the Uniform Act in 2002.¹² To date, at least twenty jurisdictions have adopted one of the following: the original Uniform Act, the amended Uniform Act, or a modified version of the Uniform Act.¹³

Discussion

A. *Uniform Interstate Enforcement of Domestic Violence Protection Orders Act*

The UIEDVPOA provides uniform procedures to facilitate effective interstate enforcement of protection orders.¹⁴ The Uniform Act is designed to implement the federal requirements of the VAWA through a uniform set of procedures:¹⁵

Key provisions of the Act include:

- **Foreign Protection Order** – defines a foreign protection order as an order issued by a tribunal of another State. The Comments to this definition state that this term generally includes only those orders issued under the domestic-violence or family-violence laws of the issuing State and protection orders outside of the domestic or family violence context are not enforceable under the provisions of the Act.¹⁶
- **Judicial Enforcement of an Order** – Courts must enforce the terms of valid protection orders from other states as if they were entered by the enforcing state, until the order expires.
 - Under the Uniform Act, there are “essentially three enforcement tracks:”
 1. Direct enforcement by a tribunal,
 2. Direct enforcement by law enforcement officers, and
 3. Registration of foreign protection orders as a prelude to enforcement.¹⁷
- **Terms of the Order Enforceable** – All terms of the order are to be enforced, even if the order provides for relief that would be unavailable under the laws of the enforcing state. Terms that concern custody and visitation matters are enforceable if issued for protection purposes and if the order meets the

<http://www.uniformlaws.org/Shared/Docs/interstate%20enforcement%20of%20domestic%20violence%20protection%20orders/2006%20UIEDVPOA%20ABA%20Commission%20on%20Domestic%20violence%20letter.pdf> .

¹² *See id.*

¹³ UIEDVOPA, *Legislative Summary*, available at

<http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Interstate%20Enforcement%20of%20Domestic%20Violence%20Protection%20Orders%20Act>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ UIEDVOPA, §2(1), cmt. §2.

¹⁷ UIEDVOPA, *Summary*, supra note 9 (“The term ‘tribunal’ is used in the Act, consistent with the usage of the Uniform Interstate Family Support Act, which has been enacted in every U.S. jurisdiction. Whether the enforcing body is a court or an agency, the term tribunal includes both within its scope”).

jurisdictional requirements of the enforcing state. (Terms of the order made with respect to support are enforceable under the Uniform Interstate Family Support Act).

- **Non-Judicial Enforcement of an Order** – A law enforcement officer, upon finding probable cause that a valid order has been violated, must enforce the order as if it were an order of the enforcing state.
- **Registration of an Order** – An individual may, but is not required to, register a foreign protection order with the enforcing state. Registration will help prevent possible challenges to an order as well as facilitate effective enforcement.
- **Immunity** – Law enforcement officers, governmental agencies, prosecuting attorneys, clerks of the court, or other officials are protected from civil and criminal liability for enforcement of a protection order in good faith.¹⁸

Section 2 of the Uniform Act provides the following:

- (a) A valid foreign protective order, including an order issued before the effective date of this [Act], must be accorded full faith and credit by a tribunal of this State. A tribunal of this State shall enforce the terms of a valid foreign protective order as if the order were issued by a tribunal of this State.
- (b) A protective order is valid if it:
 - (1) states the name of the protected individual and the individual against whom enforcement is sought;
 - (2) has not expired;
 - (3) was issued by a tribunal that had jurisdiction over the parties and matter under the law of the issuing State; and
 - (4) was issued after the respondent was provided with reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an order ex parte, the respondent was granted notice and opportunity to be heard within a reasonable time after the issuing of the order, consistent with the rights of the respondent to due process.
- (c) Proof that a foreign protective order lacked any one of the indicia of validity described in subsection (b) is an affirmative defense to any action seeking enforcement of the order.
- (d) A law enforcement officer or agency of this State, upon determining that there is probable cause to believe that a valid foreign protective order has been violated, shall enforce the order as if it were the order of a tribunal of

¹⁸ UIEDVOPA, *Why States Should Adopt UIEDVOPA*, available at <http://www.uniformlawcommission.com/Narrative.aspx?title=Why%20States%20Should%20Adopt%20UIEDVOPA>.

this State. In determining whether there is probable cause to believe that a valid foreign protective order has been violated, a law enforcement officer or agency may rely upon:

- (1) a copy of the order, if the order is valid on its face;
 - (2) oral statements by the petitioner or respondent;
 - (3) information obtained from any state or federal registries of protective orders or through communication with law enforcement officers, agencies, or tribunals; or
 - (4) any other source of information relevant to determining whether there is probable cause to believe that a valid foreign protective order has been violated.
- (e) If a law enforcement officer or agency of this State determines that an otherwise valid foreign protective order cannot be enforced because the respondent has not been notified or served with the order, the officer or agency shall notify the respondent of the terms and conditions of the order and make a reasonable effort to serve the order upon the respondent.
- (f) Registration or filing an order with the enforcing State is not required for the enforcement of valid foreign protective orders pursuant to this [Act].

B. New Jersey Statutes and Guidelines

The prevention of domestic violence is addressed in New Jersey through a combination of statutory provisions, guidelines from the Office of the New Jersey Attorney General (OAG), Rules of Court, and modules prepared by the Administrative Office of the Courts (AOC) and the Division of Criminal Justice (DoCJ).¹⁹

1. New Jersey Prevention of Domestic Violence Act

The New Jersey Prevention of Domestic Violence Act (PDVA) was enacted in 1991 to protect “the health and welfare of some of [New Jersey’s] most vulnerable citizens, the elderly and disabled, [who] are at risk because of incidents of reported and unreported domestic violence, abuse and neglect” often by “family members or others upon whom they feel compelled to depend.”²⁰ The Legislature recognized that victims of domestic violence “experience[d] substantial difficulty in gaining access to protection from the judicial system” due to the inability of the procedures, at that time, “to generate a prompt response in” exigent circumstances.²¹ The Act defines a “victim of domestic violence” as:

a person protected under this act and shall include any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to

¹⁹ See NJ. STAT ANN. §§ 2C:25-1, et seq. (2014).

²⁰ *Id.* at N.J.S. 2C:25-18.

²¹ *Id.* at N.J.S. 2C:25-18.

domestic violence by a spouse, former spouse, or any other person who is a present household member or was at any time a household member.

“Victim of domestic violence” also includes any person, regardless of age, who 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, if one of the parties is pregnant. “Victim of domestic violence” also includes any person who has been subjected to domestic violence by a person with whom the victim has had a dating relationship.²²

In subsequent amendments to update the PDVA, the Legislature authorized the OAG to adopt rules and regulations pursuant to the Administrative Procedure Act in order to implement the PDVA.²³ The OAG guidelines were updated in 2000, before the ULC issued the revised Uniform Act, to outline the procedures that law enforcement officers should follow when enforcing out-of-state protection orders.²⁴ The DoCJ and the AOC are responsible for “all training on the handling of domestic violence,” including “statutory and case law concerning domestic violence, the necessary elements of a protection order, policies and procedures as promulgated or ordered by the Attorney General or the Supreme Court.”²⁵

2. *Office of the New Jersey Attorney General (OAG) Guidelines*

The OAG guidelines reflect the full faith and credit protection requirements found in § 2265 of the VAWA for interstate enforcement of protection orders.²⁶ The guidelines state that:

- Out-of-state protection orders must be recognized and enforced, as if they were orders of a New Jersey court;
- Victims are not required to register their out-of-state order in New Jersey;
- The out-of-state order is to be enforced in New Jersey even if:
 - The victim would not be eligible for a restraining order or an order of protection in this State;
 - The out-of-state order grants the named applicant more relief than the person would have received under New Jersey law.

The guidelines provide separate procedures for emergency and non-emergency situations. In an emergency situation – circumstances that present “a need for immediate action by the police to protect the victim against violent behavior, threats, or violations of a non-contact order” – law enforcement officers are directed to proceed as follows:

²² N.J. STAT. ANN. § 2C:25-19d. (West 2016).

²³ N.J. STAT. ANN. § 2C:25-21.1 (West 2016).

²⁴ Office of the Attorney General, *Guidelines for the Enforcement of Out-of-State Restraining Orders or Orders of Protection in Domestic Violence Cases*, available at <http://www.njdcj.org/agguide/9dvout0.pdf>.

²⁵ N.J. STAT. ANN. § 2C:25-20 (West 2016).

²⁶ Office of the Attorney General, *Guidelines for the Enforcement of Out-of-State Restraining Orders or Orders of Protection in Domestic Violence Cases*, available at <http://www.njdcj.org/agguide/9dvout0.pdf>.

- An order is presumed valid.
- An order will be considered facially valid if:
 - The order contains the names of the correct parties, and;
 - The order has not expired, and;
 - 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.
- The primary responsibility of the officer is to ensure the safety of the holder of the out-of-state order, and secondarily, to verify the validity of the order.
- 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 should charge the defendant with contempt under N.J.S. 2C:29-9a.
- 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.
- The guidelines remind the officer that the PDVA provides that law enforcement officers' immunity from civil liability for an arrest based on probable cause when the officer in good faith enforced a court order.

In non-emergency situations, the law enforcement officer is directed to refer the victim to the appropriate court so that the victim may seek to obtain appropriate relief in accordance with the out-of-state restraining order or an order of protection.

New Jersey's existing OAG guidelines conform to the full faith and credit protection under the VAWA and satisfy the objectives of the UIEDVPOA. In the years preceding the 2002 revisions to the Uniform Act, the New Jersey Legislature and the OAG contemplated a procedure similar to those recommended in the Uniform Act. Adopting the Uniform Act will codify the procedures that the Legislature authorized the OAG to implement, contrary to the intent of the Legislature that the procedures maintain a degree of flexibility, which is not afforded to statutory provisions.

3. Sexual Assault Survivor Protection Act of 2015

The New Jersey Legislature addressed interstate protective orders most recently in the statutory amendments to the PDVA included in the Sexual Assault Survivor Protection Act of 2015 (SASPA).²⁷ Both houses of the Legislature unanimously passed the Sexual Assault

²⁷ P.L.2015, c.147.

Survivor Protection Act of 2015 (SASPA) and was signed into law by the governor in November 9, 2015, effective May 6, 2016.²⁸

The SASPA addresses interstate protection orders, while extending statutory protection to individuals who are threatened by, or encounter sexual violence, under circumstances where the relationship or conduct does not fall within the ambit of the PDVA.²⁹ The law now provides that individuals, who are victims of nonconsensual sexual contact, sexual assault, or lewdness, may obtain an emergency, ex parte, protective order.³⁰

A protective order may be sought, and may be issued by the court, regardless of whether criminal charges based on the incident were filed and regardless of the disposition of any such charges. . . .An order for emergency, ex parte relief [sic] would be granted upon good cause shown and would remain in effect until a judge of the Superior Court issues a further order.³¹

A temporary protective order may include the following emergency relief:

- Prohibiting the respondent from committing or attempting to commit any future act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the alleged victim;
- Prohibiting the respondent from entering the residence, property, school, or place of employment of the alleged victim or the alleged victim's family or household members, and requiring the respondent to stay away from any specified place that is named in the order and is frequented regularly by the alleged victim or the alleged victim's family or household members;
- Prohibiting the respondent from having any contact with the alleged victim or others, including an order forbidding the respondent from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to personal, written, or telephone contact, or contact via electronic device, with the alleged victim or the alleged victim's family members, or their employers, employees, or fellow workers, an employee or volunteer of a sexual assault response entity that is providing services to an alleged victim, or others with whom communication would be likely to cause annoyance or alarm to the alleged victim;

²⁸ *Id.*, see AB 4078, 216th Leg. (2015) (Bill Statement).

²⁹ *Id.*

³⁰ *Id.*

³¹ AB 4078, 216th Leg. (2015) (Bill Statement)(citing N.J. STAT. ANN. § 2C: 4-14, 15d. (West 2016).

- Prohibiting the respondent from stalking or following, or threatening to harm, stalk, or follow, the alleged victim;
- Prohibiting the respondent from committing or attempting to commit an act of harassment, including an act of cyber-harassment, against the victim; and
- Any other relief that the court deems appropriate.³²

N.J.S. 2C:14-16a. requires that a hearing in the Superior Court is held within 10 days of the filing of an application for a protective order.³³ At the hearing, the allegation made in the application must be proven by a preponderance of the evidence.³⁴ The court may consider, but is not limited to, the following: (1) the occurrence of one or more acts of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the alleged victim; and (2) the possibility of future risk to the safety or well-being of the alleged victim. A final protective order may be issued only after a finding or admission that the respondent committed an act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the alleged victim.³⁵

Under the SASPA, the final protective order:

- Prohibits the respondent from having contact with the victim; and
- Prohibits the respondent from committing any future act of nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, against the victim.

A final order may also include the following relief:

- Prohibiting the respondent from entering the residence, property, school, or place of employment of the victim or the victim's family or household members, and requiring the respondent to stay away from any specified place that is named in the order and is frequented regularly by the victim or the victim's family or household members;
- Prohibiting the respondent from having any contact with the victim or others, including an order forbidding the respondent from personally or through an agent initiating any communication likely to cause annoyance or alarm including, but not limited to, personal, written, or telephone contact, or contact via electronic device, with the victim or the victim's family members or their employers, employees, or fellow workers; an employee or volunteer of a sexual assault response entity that is providing services to a victim; or others with whom communication would be likely to cause annoyance or alarm to the victim;

³² AB 4078, 216th Leg. (2015) (Bill Statement).

³³ N.J. STAT. ANN. § 2C:14-16a. (West 2016).

³⁴ N.J. STAT. ANN. § 2C:14-16a-c. (West 2016).

³⁵ *Id.*

- Prohibiting the respondent from stalking or following, or threatening to harm, stalk or follow, the victim;
- Prohibiting the respondent from committing or attempting to commit an act of harassment, including an act of cyber-harassment, against the victim; and any other relief that the court deems appropriate.

N.J.S. 2C:14-17 – Scope of Temporary or Final Protective Order was created under the SASPA, subsection b. states that:

When a law enforcement officer finds probable cause that a respondent has committed contempt of an order pursuant to P.L.2015, c.147 the respondent shall be arrested and taken into custody. The court shall determine whether the respondent shall be released pending trial or detained pending a pretrial detention hearing.

Knowingly, violating a protective order remains fourth degree contempt under N.J.S. 2C:29-9:

a. A person is guilty of a crime of the fourth degree if he purposely or knowingly disobeys a judicial order or protective order, pursuant to section 1 of P.L.1985, c. 250 (C.2C:28-5.1), or hinders, obstructs or impedes the effectuation of a judicial order or the exercise of jurisdiction over any person, thing or controversy by a court, administrative body or investigative entity.

b. (1) Except as provided in paragraph (2) of this subsection, a person is guilty of a crime of the fourth degree if that person purposely or knowingly violates any provision in an order entered under the provisions of the “Prevention of Domestic Violence Act of 1991,” P.L.1991, c. 261 (C.2C:25-17 et al.) or an order entered under the provisions of a substantially similar statute under the laws of another state or the United States when the conduct which constitutes the violation could also constitute a crime or a disorderly persons offense.

The Legislature amended sections of N.J.S. 2C:29-9, but retained the existing language defining conduct that “knowingly violates” an out-of-state protective order as fourth degree contempt. The SASPA amendments, now the law of the State, are consistent with the requirements of the VAWA.³⁶ The SASPA, in effect, demonstrates that the Legislature considered its responsibilities to enforce the full faith and credit clause and retained the

³⁶ N.J. STAT. ANN. § 2C:14-17 (West 2016).

framework established under the PDVA, where enforcement of out-of-state protective orders are governed by rules and regulations.

Conclusion

The Legislature, in its latest consideration of the statutes involving protective orders for individuals experiencing or threatened by sexual violence, preserved the framework established under the PDVA, allowing the OAG to enact regulations, which govern out-of-state protective orders.

The Commission does not recommend that the UIEDVPOA be enacted in New Jersey at this time, in deference to the existing framework established to accomplish the goals of the Uniform Act.