

Full Faith and Credit to Protective Orders

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By Joel R. Brandes

In many cases, an abuse victim petitions the court for an order of protection. The respondent makes an oral request for a counter-order of protection at the hearing, and the court grants mutual orders of protection or the parties stipulate to mutual orders. A "mutual" order of protection is not entitled to full faith and credit when issued based on an oral application or on the court's own motion. The federal statute provides that an order of protection issued by a State or tribal court against a person who has petitioned, filed a complaint or filed a written pleading requesting an order of protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if no cross- or counter-petition, complaint, or other written pleading was filed seeking such an order of protection.

Moreover, an order of protection issued against a person who has requested an order of protection against abuse by a spouse or intimate partner is not entitled to full faith and credit, even if a cross- or counter-petition has been filed, if the court did not specifically find that each party was entitled to an order of protection.³

A "protection order" is broadly defined under 18 USC §2266. It includes any injunction or other order issued for "the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person." It includes temporary and final orders issued by civil and criminal courts (other than support or child custody orders), whether obtained by filing an independent action or as a pendente lite order in another proceeding, "so long as any civil order of protection was issued in response to a request for such protection.

The federal law affords its protection to a spouse or intimate partner, defined as a spouse, a former spouse, a person who shares a child in common with the abuser, or a person who cohabits or has cohabited with the abuser as a spouse. It also includes any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the state in which the injury occurred or where the victim resides.⁴

New York's domestic violence law, which authorizes the issuance of orders of protection, is found in §§240⁵ and 252⁶ of the Domestic Relations Law (DRL), §530.12 of the Criminal Procedure Law (CPL),⁷ and §812 of the Family Court Act⁸ (FCA), which protects members of the same family or household. They are defined in FCA §812 as persons related by consanguinity or affinity; persons legally married to one another; persons formerly married to one another; and persons who have a child in common regardless of whether such persons have been married or have lived together at any time. Thus, the federal law requires the court to give full faith and credit to orders of protection based on acts of domestic violence against spouses, their children, parents and stepchildren.

Recent Amendments

The DRL, the FCA, the Penal Law, the CPL and the Executive Law were recently amended to incorporate into state law several provisions of the federal Violence Against Women Act. In approving the legislation, Governor Pataki noted his belief that amending the state law would raise local awareness of the federal requirements and said that "although federal law requires the enforcement of out-of-state orders of protection in New York State, local officials, unfamiliar with the federal law, sometimes fail to enforce out-of-state orders, leaving domestic violence victims vulnerable to further abuse. The law remedies this weakness by explicitly requiring the enforcement of out-of-state orders of protection in New York State."⁹

DRL §240 was amended to add a new identical subdivision 3-c, and §252 was amended to add a new subdivision 7,10<\$> while^{CA} §154-e<+>¹¹ and CPL §530.11 subdivision 5,12<\$> which contain almost identical provisions, were added. These provisions are almost identical to 22 USC §2265, and provide that "a valid order of protection or temporary order of protection issued by a court of competent jurisdiction in another state, ^{territorial or tribal jurisdiction must be} accorded full faith and credit and enforced as if it were issued by a court within the state of New

York for as long as the order remains in effect in the issuing jurisdiction,Ó in accordance with 22 USC 2265 and 2266. 13<\$>

An order issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction is deemed ÓvalidÓ if the issuing court had personal jurisdiction over the parties and over the subject matter under the law of the issuing jurisdiction and if the person against whom the order was issued had reasonable notice and an opportunity to be heard prior to issuance of the order.

If the order was a temporary order of protection and was issued in the absence of such person, notice must have been given and an opportunity to be heard must have been provided within a reasonable time.

(1). Added Sept. 13, 1994, P. L. 103322. 18 USC 2261-2266.

(2). Id.

(3). Id.

(4). 18 USC 2266.

(5). See DRL 240, subdivision 3 and subdivision 3-c.

(6). See DRL 252.

(7). See CPL 530.12.

(8). See FCA 812.

(9). See Executive Memoranda, A-259, Laws of 1998, Ch 579.

@: (10). It provides:

Ò7.A valid order of protection or temporary order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction shall be accorded full faith and credit and enforced as if it were issued by a court within the state for as long as the order remains in effect in the issuing jurisdiction in accordance with 2265 and 2266 of Title 18 of the United States Code.

<@1-Footnotes Plain>Ò(a) An order issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction shall be deemed valid if:

Ò(1) the issuing court had personal jurisdiction over the parties and over the subject matter under the law of the issuing jurisdiction;

Ò(2) the person against whom the order was issued had reasonable notice and an opportunity to be heard prior to issuance of the order; provided, however, that if the order was a temporary order of protection issued in the absence of such person, that notice had been given and that an opportunity to be heard had been provided within a reasonable period of time after the issuance of the order; and

Ò(3) in the case of orders of protection or temporary orders of protection issued against both a petitioner and respondent, the order or portion thereof sought to be enforced was supported by:
(A) a pleading requesting such order, including, but not limited to, a petition, accompanied by a sworn affidavit that upon information and belief such order is in effect as written and has not been vacated or modified, may be filed without fee with the clerk of the court, who shall transmit information regarding such order to the statewide registry of orders of protection and warrants established pursuant to [Ò221]-a of the executive law; provided, however, that such filing and registry entry shall not be required for enforcement of the order.Ó

(11). Added L.1998, Ch. 597, Ò6, eff. Dec. 22, 1998.

(12). Added L. 1998, Ch. 597, Ò11, edd. Dec. 22, 1998.

(13). DRL ÒÒ240 (3-c), 252 (7); FCA Ò154-e, CPL Ò530.11.

(14). DRL ÒÒ240 (3-c)(a), 252 (7) (a), FCA Ò154-e (a), CPL Ò530.11 (a)

(15). DRL Ò252 (7)(a) id.

(16). DRL ÒÒ240 (3-c)(b), 252 (7)(b), FCA Ò154-e(b), CPL Ò530.11 (b).

Joel R. Brandes, *has law offices in Garden City and New York City. He co-authored Law and the Family New York (nine vols.) and Law and the Family New York Forms (both, Westgroup).* Bari B. Brandes is a member of the firm and co-authors the Annual

Supplements to Law and the Family New York 2d. She assisted in the preparation of this article.