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LAW AND THE FAMILY

## **"Wiping Out Domestic Violence"**

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[New York Law Journal](#)

September 24, 1996

**IN A RESPONSIBLE reaction to tragedy, the knowledge gleaned from grim events must be put to good use, triggering preventive action. But reaching that end may seem like one endless roller coaster ride. Those inclined to domestic violence need to get the message that the law will be employed aggressively and relentlessly to halt this criminal activity. Sinister yearnings for retribution can tempt us into draconian measures that, unless we are cautious, could be the cause of other injustices. Congratulations to our legislators who have delivered a one-two punch to domestic violence.**

**Effective Sept. 1, the Penal Law was amended to make it a felony to violate an order of protection. [FN1] Section 215.51(b) of the Penal Law was repealed and a new subdivision (b) was added. It provides that a person is guilty of criminal contempt in the first degree, a Class E felony, if he or she intentionally places or attempts to place the person for whom the order of protection was issued in reasonable fear of physical injury or death by committing one of several enumerated acts directed at that person. They include, among other things:**

- . displaying a deadly weapon or what appears to be a gun, rifle, pistol, revolver, machine gun, or shotgun;**
- . making a threat or threats of physical injury or death;**
- . repeatedly following the person;**
- . engaging in a course of conduct of repeatedly committing acts over a period of time.**

## **Telephone Harassment Targeted**

**It also constitutes criminal contempt in the first degree if a person "repeatedly makes telephone calls" to the person for whom the order of protection was issued, whether or not a communication ensues, "with no purpose of legitimate communication" and with the intent to harass, annoy, threaten or alarm the person for whom the order of protection was issued.**

**Section 215.52 was added to the Penal Law. It provides that a person is guilty of aggravated criminal contempt, a class D felony, if he or she intentionally or recklessly causes physical injury or serious physical injury to a person for whom an order of protection was issued.**

**Lawyers are cautioned as to the service and notice provisions of these orders. Both statutes require that the criminal act be found to have been committed "... in violation of a duly served order of protection, or such order of which the defendant has actual knowledge because he or she was present in court when such order was issued."**

**On the federal level, the Interstate Domestic Violence Act was enacted in October 1994. [FN2] It provides federal criminal penalties for abusing a spouse or "intimate partner" and requires that full faith and credit be accorded orders of protection that are made consistently with its provisions.**

**18 USC s2265 [FN3] requires that full faith and credit be given to orders of protection. Any order of protection which is issued by the court of a state or Indian tribe that "is consistent with" s2265 (b) must be accorded full faith and credit by the court of any other state or Indian tribe (the enforcing state or Indian tribe) and enforced as if it were an order of protection of the enforcing state or tribe. An order of protection issued by a state or tribal court is "consistent with" subsection (b) if the court has jurisdiction over the parties and subject matter under its law. In addition, reasonable notice and an opportunity to be heard sufficient to protect the person's right to due process must be given the person against whom the order of protection is sought to be enforced. In the case of ex parte orders of protection, notice and opportunity to be heard, sufficient to protect the respondent's due process rights, must be provided within the time required by state or tribal law, and in any event within a reasonable time after the order of protection is issued. [FN4]**

## **Mutual Orders of Protection**

In many cases an abused partner petitions the court for an order of protection and 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 may be hazardous to petitioner's case as it is not entitled to full faith and credit when issued based upon an oral application or on the court's own motion. The 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 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, even if a cross or counter petition has been filed if the court did not make specific findings that each party was entitled to an order of protection. [FN5]

18 USC s2266 [FN6] defines "protection order" broadly. [FN7] 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. A civil order of protection must be issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection.

The law affords its protection to a "spouse or intimate partner." "Spouse or intimate partner" includes a spouse, a former spouse, a person who shares a child in common with the abuser, and 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. [FN8]

New York's domestic violence law is found in Section 812 of the Family Court Act, which protects "members of the same family or household." They are defined in FCA s812 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 whether such persons have been married or have lived together at any time. Thus, the court is

required to give full faith and credit to orders of protection based on acts of domestic violence against spouses, their children, parents and step-children.

### **Law on Sex Offenders**

As a result of concern about sex offenders living in the community, the Sex Offender Registration Act (SORA) was passed and became effective on Jan. 21, 1996. [FN9] It creates Article 6-C of the Correction Law which requires individuals convicted of sex offenses to register with the Division of Criminal Justice Services within 10 days after their discharge from prison, or their release or parole. [FN10] Verification by sex offenders of their address and any relocation by them is required for at least 10 years unless the court grants relief from the registration requirement. [FN11]

The Division of Criminal Justice is required to create a file for each registered person. The file must contain the sex offender's name, physical description, aliases, date of birth, photograph, drivers license number, fingerprints, home address and/or expected place of domicile. [FN12] The information is maintained in a central registry and is to be disseminated to law enforcement agencies in accordance with the notification provisions of the law, which recognizes three levels of notification depending upon the risk of a repeat offense, [level 1, low risk; level 2, moderate risk, and level 3, high risk]. [FN13]

Public or community dissemination is authorized for sex offenders classified as a level 2 or 3 assessment. [FN14] A level 2 designation authorizes law enforcement agencies to disseminate to any entity with "vulnerable populations related to the nature of the offense" information about the sex offender, including "his approximate address based on zip code," a photograph of the sex offender, and information relative to the sex offense he was convicted of committing. [FN15] The same information concerning a level 3 sex offender, and the offender's exact address, is subject to release to any entity with "vulnerable populations related to the nature of the offense." This data is distributed to local police departments and is accessible for public inspection. [FN16]

A significant aspect of SORA is that it requires the Division of Criminal Justice to operate a "900" telephone number that members of the public may call to inquire whether a named individual is listed. If the person is registered the caller must be given the information about the registrant in accordance with her/his risk level. [FN17]

**FN1. Laws of 1995, Ch 353.**

**FN2. Added Sept. 13, 1994, P. L. 103-322. 18 USC ss2261-2266.**

**FN3. 2265. Full faith and credit given to protection orders**

**(a) Full faith and credit. Any protection order issued that is consistent with subsection (b) of this section by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the court of another State or Indian tribe (the enforcing State or Indian tribe) and enforced as if it were the order of the enforcing State or tribe.**

**(b) Protection order. A protection order issued by a State or tribal court is consistent with this subsection if**

**(1) such court has jurisdiction over the parties and matter under the law of such State or Indian tribe; 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 or tribal law, and in any event within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights.**

**(c) Cross or counter petition. A protection order issued by a State or tribal court against one who has petitioned, filed a complaint, or otherwise filed a written pleading for protection against abuse by a spouse or intimate partner is not entitled to full faith and credit if**

**(1) no cross or counter petition, complaint, or other written pleading was filed seeking such a protection order; or**

**(2) a cross or counter petition has been filed and the court did not make specific findings that each party was entitled to such an order.**

**FN4. Id.**

**FN5. Id.**

**FN6. 2266. Definitions**

**In this chapter [18 USC s2261 et seq.],**

**"bodily injury" means any act, except one done in self-defense, that results in physical injury or sexual abuse.**

**"Indian country" has the meaning stated in s1151.**

**"protection order" 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, including 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 was issued in response to a complaint, petition or motion filed by or on behalf of a person seeking protection.**

**"spouse or intimate partner" includes**

**(A) a spouse, a former spouse, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited with the abuser as a spouse; and**

**(B) 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.**

**"State" includes a State of the United States, the District of Columbia, a commonwealth, territory, or possession of the United States.**

**"travel across State lines" does not include travel across State lines by an individual who is a member of an Indian tribe when such individual remains at all times in the territory of the Indian tribe of which the individual is a member.**

**FN7. Id.**

**FN8. Id.**

**FN9. Laws of 1995, Ch192, s3.**

**FN10. Corrections Law s168-f.**

**FN11. Corrections Law ss168-f, 168-h, 169-o.**

**FN12. Corrections Law s168-b[1].**

**FN13. Corrections Law s168-1.**

**FN14. Id.**

**FN15. Id.**

**FN16. Corrections Law ss168-1, 168-q.**

**FN17. Corrections Law s168-p.**

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**9/24/96 NYLJ 3, (col. 1)**