

**STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL**

November 26, 2014

Opinion No. 14-101

Enforcement of Out-of-State and Ex Parte Orders of Protection

QUESTIONS

1. When an out-of-state order of protection is received for service and the order directs a law-enforcement officer to take custody of a minor child or children, does the officer have any obligation or responsibility to take the out-of-state order to the local court and request that the order be ratified regarding custody of the minor child or children?

2. When an out-of-state order of protection directs a law-enforcement officer to remove firearms and/or weapons, does the officer have any responsibility to take the out-of-state order to local court and request that it be ratified before removing and taking possession of the firearms or weapons?

3. When serving a Tennessee ex parte order of protection that includes a minor child or children as a protected party or parties, should the respondent be charged with a violation for contempt if the respondent violates the order by having direct or indirect communication with the child or children before having an opportunity for a hearing?

OPINIONS

1. Under the Uniform Child Custody Jurisdiction and Enforcement Act, Tenn. Code Ann. §§ 36-6-201 to -243, an out-of-state order of protection that provides for custody of a minor child may be registered in a Tennessee court, but law-enforcement officials receiving such an order for service have no obligation to submit the order for registration. Enforcement of an out-of-state custody order, however, is accomplished by an enforcement order or warrant issued by a Tennessee court.

2. No. Tennessee law-enforcement officers must give full faith and credit to all provisions of an out-of-state order, and there is no requirement that the out-of-state order be ratified by the local court before officers comply with it.

3. If a respondent has been served with a copy of an ex parte order of protection or has actual knowledge of it, a law-enforcement officer shall arrest the respondent without a warrant if the officer has reasonable cause to believe that the

respondent has violated or is in violation of the order since receiving service or acquiring actual knowledge of it.

ANALYSIS

1. Tennessee’s Uniform Child Custody Jurisdiction and Enforcement Act (“UCCJEA”), Tenn. Code Ann. §§ 36-6-201 to -243, makes provision for the recognition and enforcement of an out-of-state order providing for the custody of a minor child.¹ Under Tenn. Code Ann. § 36-6-229(a), a “child-custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement.” A “child custody determination” under the UCCJEA means a “judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child,” including a temporary or initial order, Tenn. Code Ann. § 36-6-205(3). So the UCCJEA would apply to a custody determination made as part of an order of protection. *See also id.* § 36-6-205(4) (defining “child custody proceeding” to include a proceeding for protection from domestic violence). A registered child-custody determination is “enforceable as of the date of the registration in the same manner as a determination issued by a court of this state.” *Id.* § 36-6-229(c)(1). But registration of an out-of-state child-custody determination is not required, *see id.* § 36-6-232(b), (d),² and there is no requirement in the UCCJEA that law-enforcement officials initiate the registration of such an order when they have received it for service. *See id.* § 36-6-229(a)(3) (providing that the order may be registered by sending a request for registration to the appropriate court along with “the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody . . . in the child-custody determination sought to be registered”).

Under Tenn. Code Ann. § 36-6-232(a), a proceeding for enforcement of a child-custody determination is commenced by filing a verified petition. “This section provides the normal remedy that will be used in interstate cases: the production of the child in a summary, remedial process based on habeas corpus.” *Id.* § 36-6-232, Comments to Official Text. Upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent succeeds in challenging the validity of the child-custody determination. *Id.* § 36-6-234(a). The court may also grant additional relief, including a request for the assistance of law-

¹ The purposes of the UCCJEA include avoiding jurisdictional competition, and promoting cooperation, with the courts of other states in matters of child custody and facilitating the enforcement of other states’ custody decrees. Tenn. Code Ann. § 36-6-202(1), (2), (6).

² While registration is not required, “[i]f the order has been registered and confirmed in accordance with . . . [§ 36-6-229], the only defense to enforcement is that the order has been vacated, stayed or modified since the registration proceeding by a court with jurisdiction to do so.” Tenn. Code Ann. § 36-6-232, Comments to Official Text.

enforcement officials. *Id.* § 36-6-234(b); *see also id.* § 36-6-235 (making provision, at the enforcement-petition stage, for the issuance of a warrant to take physical custody of the child “if the child is immediately likely to suffer serious physical harm or be removed from this state”).

2. Tenn. Code Ann. § 36-3-622(a) provides that “[a]ny valid protection order related to abuse, domestic abuse, or domestic or family violence, issued by a court of another state, tribe or territory shall be afforded full faith and credit by the courts of this state and enforced as if it were issued in this state.”³ This provision was enacted by the General Assembly in 1997, following the enactment of the federal Violence Against Women Act (VAWA), which requires that each jurisdiction give full faith and credit to abuse-protection orders entered by courts of other jurisdictions. *See* 18 U.S.C. § 2265.

Under the VAWA full faith and credit provision, a state must recognize a valid protection order issued by another state and enforce it just as if it were issued in-state. If the order is valid under the terms of the issuing state, the forum state must enforce it, even if it contains terms or includes parties that would be beyond the scope of an order in the forum state.

Emily J. Sack, *Domestic Violence Across State Lines: The Full Faith and Credit Clause, Congressional Power, and Interstate Enforcement of Protection Orders*, 98 *Nw. U. L. Rev.* 827, 829 (2004).

Although a petitioner may present a foreign order of protection to a local court for filing, filing is not required for the order to be recognized in Tennessee. *See* Tenn. Code Ann. § 36-3-622(c), (g). There is no requirement that the order be ratified by a local court to be effective. “Regardless of whether a foreign order of protection has been filed in this state,” a law-enforcement officer may rely upon a copy of the protection order provided “by any source” and may also rely on the statement of the person protected by the order that the order remains in effect. *Id.* § 36-3-622(g). Thus, an officer presented with a valid out-of-state order of protection directing the removal of firearms and/or weapons from the respondent’s possession must give full faith and credit to that order and comply with its provision, even if the order has not been filed with or ratified by a Tennessee court.

³ An order that appears authentic on its face is presumed valid. Tenn. Code Ann. § 36-3-622(b)(1). For an order to be valid in Tennessee, “the respondent must have been given reasonable notice and the opportunity to be heard before the order . . . was issued”; in the case of ex parte orders, “notice and opportunity to be heard must have been given as soon as possible after the order was issued, consistent with due process.” *Id.* § 36-3-622(b)(2). Failure to provide reasonable notice and the opportunity to be heard is an affirmative defense to any charge or process seeking enforcement of the order. *Id.* § 36-3-622(b)(3).

3. A law-enforcement officer with proper jurisdiction who has verified that an order of protection is in effect and who has reasonable cause to believe that the respondent has violated or is in violation of the order is required to arrest the respondent without a warrant. Tenn. Code Ann. § 36-3-611(a). An *ex parte* order, however, cannot be enforced by arrest until the respondent has been served with or has actual knowledge of the order. Tenn. Code Ann. § 36-3-611(b). *See also* Tenn. Att’y Gen. Op. 06-094, at 3 (May 22, 2006) (“If the individual has violated an *ex parte* order of protection, a warrantless arrest is still required so long as the defendant has been served with the order of protection or has actual knowledge of it.”). Therefore, if a respondent has been served with or has actual knowledge of an *ex parte* order of protection that prohibits the respondent from communicating directly or indirectly with a minor child or children, and a law-enforcement officer has reasonable cause to believe that the respondent has violated or is in violation of the order since receiving service or acquiring actual knowledge of it, the officer is required to arrest the respondent. The officer’s obligation to arrest is not affected by the fact that a hearing on the order of protection has not yet been held. Upon arrest, the person shall be taken before a magistrate or the court to answer to a charge of contempt. Tenn. Code Ann. § 36-3-612(a).

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