

## GVictims of Domestic Violence State Statutes 2006

### Victims of Domestic Violence

#### **Law Enforcement Notice to Victims of Domestic Violence – [Criminal Procedure Law §530.11\(6\)](#); [Family Court Act §812\(5\)](#)**

Requires law enforcement and the district attorney to advise a victim of a family offense of the availability of shelter and other services in the community in addition to written notice of their legal rights and remedies including the right to file for an order of protection, medical treatment and to have police accompaniment to a place of safety. The notice must be available in English and Spanish.

#### **Crime Victim Notice to Family Offense Victims – [Public Health Law §2803\(h\)](#)**

Requires hospitals providing treatment to alleged victims of family offenses to provide a victim's rights notice.

### Financial Assistance

#### **Emergency Awards and Awards for Relocation Expenses – [Executive Law §§630, 631\(2\)](#)**

Provides emergency awards from the Crime Victims Compensation Board (CVB) to victims where undue hardship will result to the claimant if immediate payment is not made. Amount of each emergency award does not exceed \$500 (maximum of \$1,500), which is deducted from any final award made. Local crime victim service programs are authorized to provide emergency awards to victims for shelter costs and security services, among other needs, in the amount of \$500. Provides that victims of crime including domestic violence may seek reasonable relocation expenses not exceeding \$2,500 from CVB.

#### **Reimbursement for Custody Hearings – [Domestic Relations Law §77-k](#)**

Entitles the prevailing party in a custody hearing to file for reimbursement of expenses, attorney's fees, investigative fees, expenses for witnesses, travel and child care during the course of the proceedings. A parent fleeing domestic violence, mistreatment or abuse of a child or sibling will not be assessed these costs, unless the court finds otherwise.

#### **Foreclosure Protection – NY CLS Domestic Relations Law Appx §1400.5(b) \***

Prohibits foreclosure on a mortgage of a primary residence to secure payment in a matrimonial action

from a victim.

( \* See note below. )

### **Waivers to Public Assistance Requirements and Record Confidentiality – [Family Violence Option – Social Services Law §349-a](#)**

Enables applicants and recipients of general welfare benefits who are screened as domestic violence victims to obtain a waiver from program requirements that might endanger their safety and the safety of their children, including residency rules, child support cooperation requirements, employment and work training regulations or the requirement to establish the paternity of the child(ren). Victims of domestic violence can apply for a waiver from the 60-month time limit on receiving cash assistance if the applicant is unable to work or participate in a training program due to physical or mental disability caused by domestic violence or because she or he is needed in the home to care for a child who has a disability (does not have to be a long-term disability) caused by domestic violence. The law provides for confidential screening by social services for domestic violence and referral to a domestic violence liaison and services. Statutory provisions forbid the release of private information to any outside party or governmental agency unless the information is required to be disclosed by law or the applicant authorizes release in writing.

### **Unemployment Benefits – [Labor Law §593](#)**

Provides that a victim of domestic violence may qualify for unemployment benefits if she or he left their job as a result of circumstances directly related to the abuse.

## **Access to Justice**

### **Domestic Violence Incident Report (DIR) – [Criminal Procedure Law §§140.10\(5\), 530.11\(6\); Executive Law §§214-b\(a\), 837\(15\)](#)**

Requires police officers on the local, state and county levels to prepare and file a written report of the domestic violence incident whether or not an arrest has been made. The DIR, on a standardized form developed by the Division of Criminal Justice Services (DCJS) with consultation with the State Police and the Office for the Prevention of Domestic Violence (OPDV), must include any statements made by the victim and by any witness. The report is to be kept on file by the law enforcement agency for a minimum of four years. A free copy of the DIR must be given to the victim at the scene. A domestic incident can include any disturbance, dispute, violence, threatened or actual, between members of the same family or household including persons related by blood or marriage; persons formerly married to one another; persons who have a child in common regardless of whether such persons have been married or lived together at any time. ( See *Criminal Procedure Law §530.11(1) and Family Court Act*

§812(1).) (According to the Office for the Prevention of Domestic Violence, a DIR may also be filed according to police department policy where there is violence or an offense between current or former dating partners or anyone who lives or has lived in the same household.)

### **Mandatory Arrest and Primary Physical Aggressor – [Criminal Procedure Law §140.10\(4\)](#)**

Requires an arrest in certain circumstances involving family/household members. In felony cases, the police must arrest the abuser. If the police find that a misdemeanor constituting a family offense was committed, they are required to make an arrest unless the victim specifically asks the police not to make the arrest. In cases where the police has reasonable cause to believe that more than one family/household member committed a misdemeanor family offense, the officer is not required to arrest both parties, only the primary physical aggressor. Specific guidelines to assist in identifying the aggressor include the extent of injuries, history of domestic violence and whether one party acted in self-defense. ( *Sunsets Sept. 1, 2007*)

### **Orders of Protection for Family and Non-Family Offenses – [Criminal Procedure Law §§530.11, 530.12, 530.13](#); [Family Court Act §§ 828, 842](#); [Domestic Relations Law §§240, 252](#)**

Provides for orders of protection or restraining orders requiring the abuser to refrain from certain behaviors and/or comply with specific conditions. Generally, relief may require the defendant/respondent to: refrain from contacting the victim; refrain from future acts of harassment, intimidation, violence; physically leave the home; not possess any firearms; pay restitution; continue health insurance coverage; pay for property damage; refrain from using alcohol or drugs; adhere to visitation restrictions; refrain from intentionally injuring or killing a companion animal. Depending on the relationship (e.g., current or former spouse, related by blood or persons having a child in common), a victim can seek relief from criminal court and from family court if the offense committed is a family offense. Orders of protection in family court address issues relating to custody, visitation and child support and protection and establish rules on the use of personal property. ( *See also Family Court Act §§ 446, 551, 656, 1056.*) The minimum duration of an order of protection varies depending on the nature of the case and the issuing court.

### **Temporary Orders of Protection and Emergency Orders for Family and Non-Family Offenses – [Criminal Procedure Law §§530.11, 530.12\(3\), 530.13](#); [Domestic Relations Law §240](#); [Family Court Act §§153-c, 828](#)**

Enables victims to obtain an emergency ex-parte order of protection (where only the victim is present in court, not the defendant/respondent) if they can demonstrate that they need immediate protection and that the court should temporarily dispense with the other party's due process rights including the right to notice. This order lasts until a full court hearing is held where the alleged abuser has an opportunity to be present. The defendant/respondent can request that the order be vacated or modified. To be valid, a

temporary order must be served on the defendant/respondent, who should also be served with notice of the full court hearing.

**Family Offenses – [Criminal Procedure Law §§530.11\(1\), 530.12](#); [Family Court Act §§154-d, 812.00\(1\)](#)**

Both family and criminal court have jurisdiction over designated family offenses (disorderly conduct, harassment, aggravated harassment, stalking, menacing, reckless endangerment, assault, attempted assault). When family court is not in session, criminal court may exercise jurisdiction over family offenses. Family offenses are defined as offenses committed by spouses or former spouses, or between parent and child or between members of the same family or household (persons related by consanguinity or affinity; legally married; formerly married; persons having a child in common, regardless of whether persons have been married or have ever lived together).

**Copies of Orders of Protection – [Criminal Procedure Law §§530.12\(8\), 530.13\(6\)](#); [Family Court Act §168\(1\)](#)**

Requires the court to issue the complainant, the defendant, the defense counsel and any other person affected by the order, a copy of the order of protection.

**Enforcement of Out-of-State Orders of Protection in Domestic Violence Cases – [Criminal Procedure Law 530.11\(5\)](#); [Family Court Act §154-e](#)**

Requires that an out-of-state court, territorial or tribal order of protection be enforced as if it were a New York State order of protection.

**Statewide Registry of Orders of Protection and Arrest Warrants – [Executive Law §221-a](#); [Criminal Procedure Law §530.13](#)**

Establishes the computerized statewide registry of orders of protection and warrants, containing orders of protection and related bench and arrest warrants issued in criminal and family courts for family offenses; matrimonial, child support, paternity and child custody cases; non-family offense cases brought between intimate partners; special orders of conditions in criminal cases, where a defendant is found not responsible by reason of mental disease or defect, as defined by section 459-a of the social services law; youthful offender cases; and out-of-state orders of protection. Criminal courts are required to enter into the registry any order of protection for domestic violence victims. A person having an out-of-state court order of protection may file the order with the clerk of the relevant court in the State without payment of a fee and the information will be entered onto the registry. However, out-of-state orders do not have to be entered into the registry in order to be enforced.

**Violations of Orders of Protection – [Criminal Procedure Law §§140.10, 530.12\(11\)](#); [Penal Law 215.51, 215.52](#); [Family Court Act §846-a](#)**

Requires the police to arrest the abuser where there is evidence that gives them reasonable cause to

believe that the order of protection or special order of conditions was violated by the abuser by either failing to stay away or by committing another family offense. This applies to out-of-state orders. Where the defendant/respondent violated an order of protection, the defendant/respondent may be charged with contempt of court in criminal court. Additionally, a violation of an order of protection may result in the court (family/criminal court) revoking an order of recognizance or bail; revoking a conditional discharge or probation; modifying an existing order; making a new order; ordering the respondent to pay the victim's counsel fees, ordering the revocation of a firearm license; and/or ordering the respondent/defendant to jail.

**Assignment of Counsel– [Family Court Act §262](#); [Judiciary Law§ 35](#)**

Requires the family court to appoint an attorney to represent an indigent person in court proceedings involving a family offense, custody and visitation, paternity, child welfare and contempt matters.

Whenever the supreme court exercises jurisdiction over a matter which the family court could have exercised jurisdiction ( e.g., custody, order of protection issues in marital dissolution cases) had such action been filed in family court, supreme court must appoint counsel for the indigent person.

**Uniform Child Custody Jurisdiction and Enforcement Act – [Domestic Relations Law §76-g et. seq.](#)**

Allows the court, in making a custody determination, to not penalize a parent who fled with a child from the custodial parent in order to avoid domestic violence, abuse or mistreatment. However, the court can enforce an order for the return of the child.

**Temporary Emergency Child Custody – [Domestic Relations Law §76-c](#)**

Authorizes the criminal court to exercise temporary emergency custody jurisdiction when a child, sibling or parent is in danger. The court must coordinate with any other state where a similar proceeding has been commenced.

**Best Interests of the Child – [Domestic Relations Law §240](#); [Family Court Act §§447, 467, 549, 651, 652](#)**

Requires that the court consider the effect of domestic violence upon the best interests of the child, along with other relevant facts, in child support and custody visitation determinations.

**Statute of Limitation for Filing a Civil Claim Against Perpetrator of an Assault – [Civil Practice Law and Rules §215\(3\)\(8\)](#)**

A victim may bring a civil proceeding to recover damages for assault within one year of the commission of the crime. Additionally, the law provides that a victim may sue the perpetrator within one year of the termination of the criminal action, whether it ended in conviction or acquittal.

## Safety Provisions

**Firearm Suspension and Revocation and Orders of Protection – [Family Court Act §§842-a, 846-a](#); [Penal Law §400.00](#); [Criminal Procedure Law §530.14](#); [Domestic Relations Law §§240, 252](#)**

Requires the court to suspend a firearm license, order respondent ineligible and seek the surrender of any firearm upon the issuance of a temporary order of protection where a defendant or respondent has a prior violent felony conviction; or a prior violation of an order of protection involving the infliction of serious injury, the use or threatened use of a deadly weapon or dangerous instrument, behavior constituting a violent felony offense; or the defendant has a prior conviction of stalking. License revocation, order of ineligibility and firearm surrender is mandatory following a felony conviction in criminal court; family court disposition in instances where the conduct resulting in the order of protection involves serious physical injury, the use or threatened use of a deadly weapon or dangerous instrument, behavior constituting a violent felony; or where the court finds that the respondent willfully violated any order of protection involving the infliction of serious injury, the use or threatened use of a deadly weapon or instrument; behavior constituting any violent felony offense; or behavior constituting any degree of stalking.

The court may suspend or revoke an existing firearm license, order the offender ineligible for such a license and order the immediate surrender of firearms where it finds "a substantial risk" that the offender may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection was issued. The order of protection must specify the place, date and time of surrender and where possible a description of the weapons in respondent's possession.

**Emergency Shelter for Victims of Domestic Violence – [Social Services Law §459-b, §131-u](#)**

Requires the Department of Social Services to provide necessary and available emergency shelter and services at a residential program for victims of domestic violence. Domestic violence victims are not required to be recipients or applicants of public assistance to benefit from emergency shelter provision.

**Special Ballots for Victims of Domestic Violence – [Election Law §11-306](#)**

Requires the Board of Elections to allow a victim of domestic violence who has been forced to leave her or his residence to cast and submit their special ballot a week before the election and up until the polls close.

**Confidentiality of Personal and Residential Program Information – [Domestic Relations Law §254](#); [Family Court Act §154-b](#)**

Authorizes the court to keep the victim's current address, telephone number, including the address of a domestic violence residential program or shelter, confidential in any proceeding involving paternity, custody, divorce, separation or annulment, family offenses or a person in need of suspension. The court is required to designate another person such as the court clerk to receive any court papers, if the court

finds that such information poses a risk to the health or safety of the adult and/or child victim. The court must seal the victim's location and not disclose this information in any pleadings or document.

**Confidentiality of Insurance Information – [Insurance Law §2612\(f\),\(g\)](#)**

Prohibits an insurance company from disclosing the address and telephone number of a person covered by the insurance company upon receipt of a valid order of protection against another person covered by the same policy.

## **Medical and Health Services**

**Non-residential Services – [Social Services Law §459-c](#)**

Requires the Department of Social Services and social services districts to offer and provide non-residential services including but not limited to, counseling, information and referral services, advocacy, community education, outreach activities and hotline services to a victim of domestic violence regardless of whether she or he is eligible for public assistance.

**Family Violence Education to New Parents – [Public Health Law §2803-p\(2\)](#)**

Requires hospitals and diagnostic and treatment centers to disclose information concerning the affects of family violence and services available to pregnant women and parents of newborns.

**Partner Notification of HIV – [Public Health Law §§2133, 2137](#)**

Authorizes local health departments to notify the spouse and any known sexual partner of any person testing positive for HIV. Requires the Department of Health and OPDV to develop a protocol to identify positive tested individuals or their partners who may be victims of domestic violence.

**Reporting Abuses of Persons Receiving Care or Services in Residential Health Care Facilities – [Public Health Law §2803-d](#)**

Requires any residential health care facility operator, employee or medical staff member who has reasonable cause to believe that a patient has been physically abused, mistreated or neglected to report such an act, unless the abuse is by another patient, to the Department of Health.

## **Workplace Provisions**

**Reasonable Accommodations for Disability – [Executive Law §§292\(21-e\), 296\(3\)](#)**

Provides persons who suffer from long-term physical or mental injuries, such as post-traumatic stress disorder and depression to qualify as a disabled individual eligible for "reasonable accommodations" at the workplace to protect the employee's health and security. Thus, a domestic violence victim may qualify for "reasonable accommodations" if as a result of abuse they suffer from the above symptoms.

**Insurance Discrimination – [Insurance Law §2612](#)**

Prevents insurance companies from discriminating against victims of domestic violence by classifying domestic violence as a pre-existing condition which may result in insurance companies charging a higher premium or denying or canceling coverage. If a policy change is made, the insurer must notify the consumer of its specific reasons which must be based on underwriting criteria related to anticipated or actual loss.

**Workplace Violence Policy – [Executive Law §575](#); [Labor Law §27-b](#)**

Requires OPDV to develop and provide a model domestic violence employee awareness and assistance policy for businesses throughout New York State. In addition, public employers must devise and implement programs and training to prevent workplace violence, including the measures employees can take to protect themselves, appropriate work practices, emergency procedures and the use of security alarms and other devices.

\*\* Labor Law §27-b, effective March 4, 2007

**Protections Against Employment Termination or Penalties – [Penal Law §215.14](#)**

Prohibits an employer from penalizing or discharging a victim who takes time off for various legal procedures or to exercise their rights such as appearing as a witness, consulting with the district attorney or obtaining an order of protection. The victim must give prior day notice and the employer may withhold wages. An employer who violates this provision may be found guilty of a class B misdemeanor.

***\* Note: As of the date of this document's publication, Find Law has not updated its online posting of NYS law to reflect this new reference. Consult a hardcopy of the law.***

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