



SUFFOLK ACADEMY OF LAW
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DOMESTIC VIOLENCE

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October 23, 2017
Suffolk County Bar Center, NY

**AMISTAD LONG ISLAND BLACK BAR ASSOCIATION , SUFFOLK COUNTY
WOMEN'S BAR ASSOCIATION & SUFFOLK COUNTY BAR ASSOCIATION**

DOMESTIC VIOLENCE CLE

October 23, 2017

- I Domestic Violence in Suffolk County Overview**
LaToya James, Esq. & Wendy Linsalata
Long Island Against Domestic Violence
Will provide statistical information regarding victims of domestic violence and types of domestic violence.
- II Family Offenses & Important Details of Petitions for Orders of Protection**
Court Attorney Referee Rosann Orlando
- III. Domestic Violence & Child Welfare Issues**
Hon. Theresa Whelan
- VI. Orders of Protection in District Court**
Hon. James McDonaugh
Offenses for which ACOD available; OP violations/contempt applications.
- V. Orders of Protection in Matrimonial Cases**
Hon. Andrew Crecca

LaToya James, Esq.

LaToya James, Esq., is a former **Senior Suffolk County Assistant District Attorney** and a **Certified Matrimonial, Family, Child Custody and Visitation Mediator**.

During her tenure in the **District Attorney's Office**, Attorney James earned a reputation as an aggressive yet compassionate prosecutor. She handled thousands of misdemeanor and felony level criminal offenses from arraignment through trial. Ms. James ended her career with the District Attorney's Office as a **Senior Assistant District Attorney in the Major Crime Bureau**, where she handled felony level criminal offences including robberies, burglaries, assaults, sex and vehicular crimes. Ms. James has also been the designated prosecutor in the **Integrated Domestic Violence** part of the Supreme Court and the **Suffolk County Felony Youth Part**.

LaToya's experience as an **Assistant District Attorney** gives her invaluable insight into how prosecutors investigate and evaluate cases, as well as the trial strategies they employ. She is equipped with the knowledge and experience to dismantle the prosecution's theory and secure favorable results for her criminal court clients.

LaToya is the consulting attorney for **Long Island Against Domestic Violence**, an organization committed to the empowerment of victims and survivors of Domestic Abuse. This partnership with LIADV ensures that clients of **The James Firm** have access emergency shelter, counseling, vocational training and educational resources.

Latoya is an experienced **Criminal Defense** attorney and a champion for victims of **Domestic Violence**. She is well respected by colleagues, adversaries, law enforcement and the Judiciary. **The National Trial Lawyers Association** has named LaToya James one of the **Top 100 Trial Lawyers in the State of New York**. **The American Society of Legal Advocates** named LaToya one of the **Top 40 Lawyers under 40**. LaToya embodies an unwavering commitment to justice and is a zealous advocate for her clients. Her motto is "competent counsel inspires informed decisions."



L.I. Against Domestic Violence

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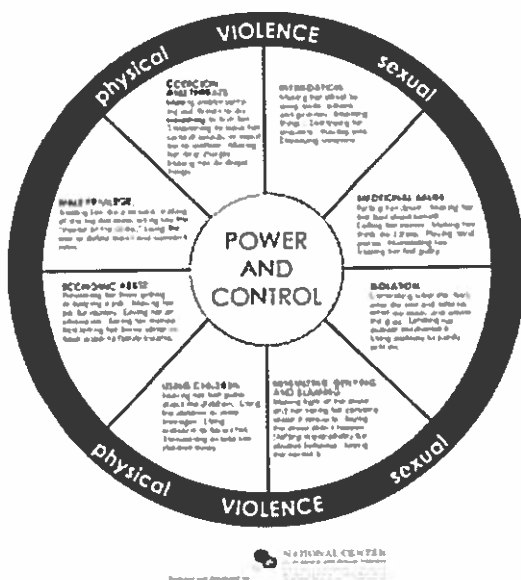
— Power and Control Wheel



Power and Control Wheel

Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that allow others to become aware of the problem. However, regular use of other abusive behaviors by the batterer, when reinforced by one or more acts of physical violence, make up a larger system of abuse. Although physical assaults may occur only once or occasionally, they instill threat of future violent attacks and allow the abuser to take control over the woman's life and circumstances.

The Power and Control diagram is a particularly helpful tool in understanding the overall pattern of abusive and violent behaviors, which are used by the batterer to establish and maintain control over his partner. Very often, one or more violent incidents are accompanied by an array of these other types of abuse. They are less easily identified, yet firmly establish a pattern of intimidation and control in the relationship.



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- Power and Control Wheel
- Forms of Abuse
- Children and Domestic Violence
- Teens and Dating Violence
- How to Help a Friend
- Men and Domestic Violence
- The Elderly
- Myths and Facts

L.I. Against Domestic Violence is committed to the empowerment of victims and survivors of domestic violence through supportive services including hotline, counseling, vocational training, emergency shelter, prevention and education resources, and legal advocacy.

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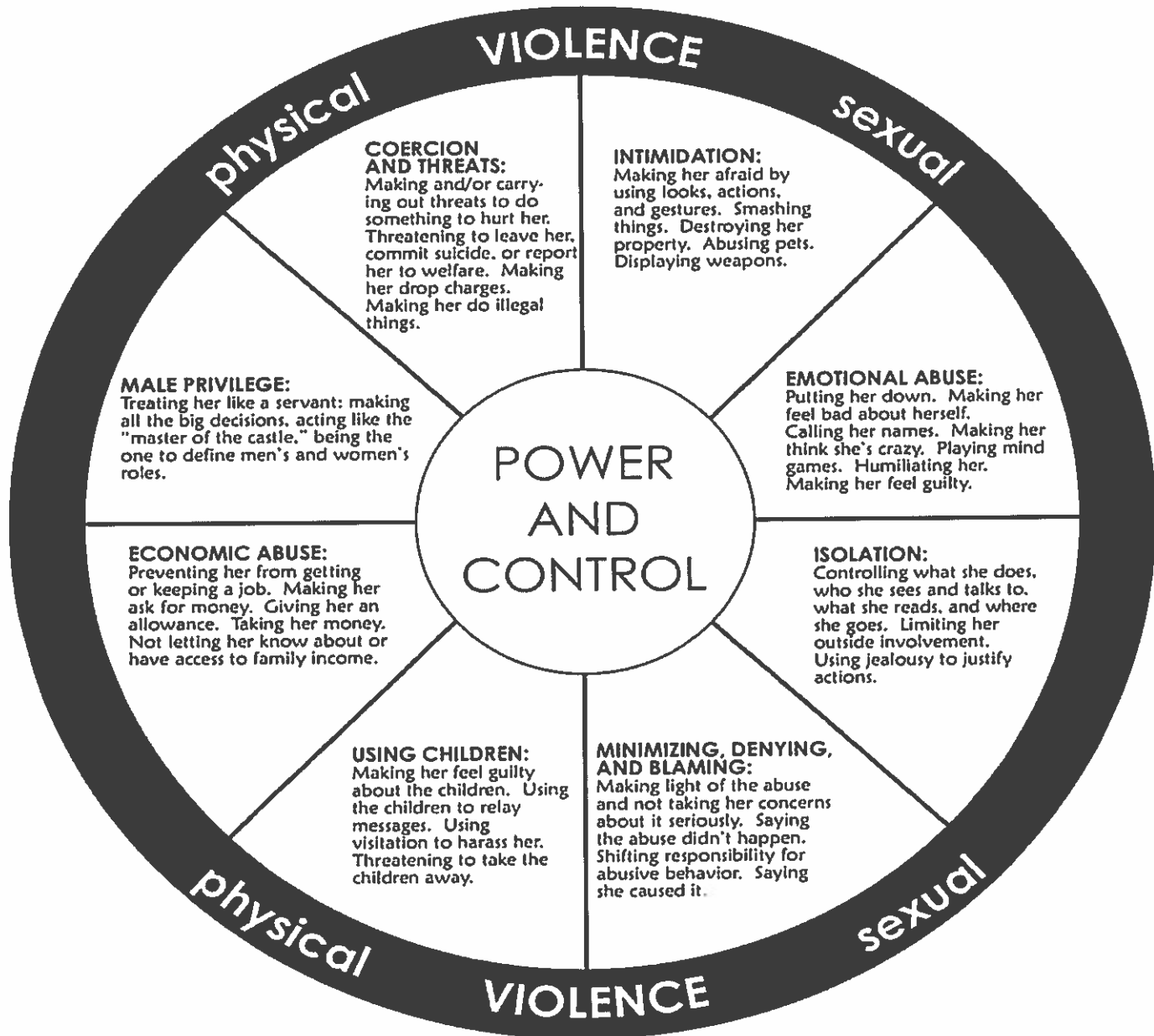
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Biography of Rosann O. Orlando

The distinguished Court Attorney Referee Rosann O. Orlando has served as a Court Attorney Referee since 2009. She joined the Suffolk County Family Court as a Support Magistrate in 2004.

Prior to her joining the court system she worked in private practice and with the Long Island Coalition against Domestic Violence. She also served as an Assistant District Attorney with the Suffolk County District Attorney's Office.

She attended SUNY Old Westbury and received her Bachelor in Science. She received her Juris Doctorate from Touro College Jacob D. Fuchsberg Law Center graduating summa cum laude.

She is a member of the New York State Bar Association and New York State Judicial Committee on Women in the Courts. Referee Orlando has extensive knowledge and experience in domestic violence, custody, visitation, and family offense matters. She is a loving wife, proud mother and true definition of brilliance and class.

FAMILY OFFENSES (FCA Article 8)**Harassment: 1st Degree: Penal Law §240.25**

A person is guilty of harassment in the first degree when he or she intentionally and repeatedly harasses another person by following such person in or about a public place or places or by engaging in a course of conduct or by repeatedly committing acts which places such person in reasonable fear of physical injury. This section shall not apply to activities regulated by the national labor relations act, as amended, the railway labor act, as amended, or the federal employment labor management act, as amended.

Harassment: 2nd Degree: Penal Law §240.26

A Person is guilty of harassment in the second degree when, with intent to harass, annoy or alarm another person:

1. He or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same; or
2. He or she follows a person in or about a public place or places; or

He or she engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy.

Aggravated Harassment: 2nd Degree: Penal Law §240.30

A person is guilty of aggravated harassment in the second degree when, with intent to harass, annoy, threaten or alarm another person, he or she:

1. With intent to harass another person, the actor either:

(a) Communicates, anonymously or otherwise, by telephone, by Computer or any other electronic means, or by mail, or by transmitting or delivering any other form of communication. A threat to cause physical harm to, or unlawful harm to the property of, such person, or a member of such person's same family or household as defined in subdivision one of section 530.11 of the criminal procedure law, and the actor knows or reasonably should know that such communication will cause such person to reasonably fear harm to such person's physical safety or property, or to the physical safety or property of a member of such person's same family or household; or

(b) Causes a communication to be initiated by anonymously or otherwise, by telephone, by Computer or any other electronic means, or by mail, or by transmitting or delivering any other form of communication. A threat to cause physical harm or unlawful harm to the property of, such person, a member of such person's same family or household as defined in subdivision one of section 530.11 of the criminal procedure law, and the actor knows or reasonably should know that such communication will cause such person to reasonably fear harm to such person's physical safety or property, or to the physical safety or property of a member of such person's same family or household; or

2. With intent to harass, annoy, threaten another person, he or she makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication; or

3. With the intent to harass, annoy, threaten or alarm another person, he or she strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct; or

4. With the intent to harass, annoy, threaten or alarm another person, he or she strikes, shoves, kicks or otherwise subjects another person to physical contact thereby causing physical injury to such person or to a family or household member of such person as defined in section 530.11 of the criminal procedure law.

5. He or she commits the crime of harassment in the first degree and has previously been convicted of the crime of harassment in the first degree as defined by section 240.25 of this article within the preceding ten years.

For the purposes of subdivision one of this section, "form of written communication" shall include, but not be limited to, a recording as defined in subdivision six of section 276.00 of this part.

Reckless Endangerment: 2nd Degree: Penal Law §120.20

A person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

Assault: 2nd Degree: Penal Law §120.05

A person is guilty of assault in the second degree when:

1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person; or
2. With intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or
3. Not applicable
4. He recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or
5. For a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness, or other physical impairment or injury to another person by administering to him, without his consent, a drug, substance or preparation capable of producing the same; or
6. In the course of and in furtherance of the commission or attempted commission of a felony, other than a felony defined in article one hundred thirty which requires corroboration for conviction, or of immediate flight therefrom, he, or another participant if there be an, causes physical injury to a person other than one of the participants; or
7. Not applicable
8. Being eighteen years old or more and with intent to cause physical injury to a person less than eleven years old, the defendant recklessly causes serious physical injury to such person; or
9. Being eighteen years old or more and with intent to cause physical injury to a person less than seven years old, the defendant causes such injury to such person; or
10. Not applicable
11. With intent to cause physical injury to a person who is sixty-five years of age or older³, he or she causes such injury to such person, and the actor is more than ten years younger than such person.

Assault: 3rd Degree: Penal Law §120.00

A person is guilty of assault in the third degree when:

1. With intent to cause physical injury to another person, he causes such injury to such person or to a third person; or
2. He recklessly causes physical injury to another person; or
3. With criminal negligence, he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

Disorderly Conduct: Penal Law §240.20

A person is guilty of disorderly conduct when, with intent to cause, public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

1. He engages in fighting or in violent, tumultuous or threatening behavior; or
2. He makes unreasonable noise; or
3. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or
4. Without lawful authority, he disturbs any lawful assembly or meeting of persons; or
5. He obstructs vehicular or pedestrian traffic; or
6. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or
7. He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose.

Reckless Endangerment: 1st degree Penal Law §120.25

A person is guilty of reckless endangerment in the first degree when, under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person.

Criminal Mischief: 3rd Degree: Penal Law §145.05

A person is guilty of criminal mischief in the third degree when, with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he or she has such right, he or she:

1. damages the motor vehicle of another person, by breaking into such vehicle when it is locked with the intent of stealing property, and within the previous ten year period, has been convicted three or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of criminal mischief in the fourth degree as defined in section 145.00, criminal mischief in the third degree as defined in this section, criminal mischief in the second degree as defined in section 145.10, or criminal mischief in the first degree as defined in section 145.12 of this article; or

2. Damages property of another person in an amount exceeding two hundred fifty dollars.

Criminal Mischief: 2nd Degree: Penal Law §145.10

A person is guilty of criminal mischief in the second degree when with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he has such right, he damages property of another person in an amount exceeding one thousand five hundred dollars.

Menacing: 3rd Degree: Penal Law §120.15

A person is guilty of menacing in the third degree when, by physical menace, he or she intentionally places or attempts to place another person in fear of death, imminent serious physical injury or physical injury

Menacing: 2nd Degree: Penal Law §120.14

A person is guilty of menacing in the second degree when:

1. He or she intentionally places or attempts to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or

2. He or she repeatedly follows a person or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place another person in reasonable fear of physical injury, serious physical injury or death; or

3. He or she commits the crime of menacing in the third degree in violation of that part of a duly served order of protection, or such order which the defendant has actual knowledge of because he or she was present in court when such order was issued, pursuant to article eight of the family court act, section 530.12 of the criminal procedure law, or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, which directed the respondent or defendant to stay away from the person or persons on whose behalf the order was issued.

Criminal Mischief: 4th degree: Penal Law §145.00

A person is guilty of criminal mischief in the fourth degree when having no right to do so nor any reasonable ground to believe that he or she has such right, he or she:

1. Intentionally damages property of another person; or

2. Intentionally participates in the destruction of an abandoned building as defined in section one thousand nine hundred seventy-one-a of the real property actions and proceedings law; or

3. Recklessly damages property of another person in an amount exceeding two hundred fifty dollars; or

4. With intent to prevent a person from communicating a request for emergency assistance, intentionally disables or removes telephonic, TTY or similar communication sending equipment while that person: (a) is attempting to seek or is engaged in the process of seeking emergency assistance from police, law enforcement, fire or emergency medical services personnel; or (b) is attempting to seek or is engaged in the process of seeking emergency assistance from another person or entity in order to protect himself, herself or a third person from imminent physical injury. The fact that the defendant has an ownership interest in such equipment shall not be a defense to a charge pursuant to this subdivision.

Criminal Mischief: 1st Degree: Penal Law §145.12

A person is guilty of criminal mischief in the first degree when with intent to damage property of another person, and having no right to do so nor any reasonable ground to believe that he has such right, he damages property of another person by means of an explosive.

Menacing: 1st Degree: Penal Law §120.13

A person is guilty of menacing in the first degree when he or she commits the crime of menacing in the second degree and has been previously convicted of the crime of menacing in the second degree or the crime of menacing a police officer or peace officer within the preceding ten years

Criminal Obstruction of Breathing or Blood Circulation: Penal Law §121.11

A person is guilty of criminal obstruction of breathing or blood circulation when, with intent to impede the normal breathing or circulation of the blood of another person, he or she:

a. applies pressure on the throat or neck of such person; or

b. blocks the nose or mouth of such person.

Sexual Abuse 2nd Degree: Penal Law §130.60

A person is guilty of sexual abuse in the second degree when he or she subjects another person to sexual contact and when such other person is:

In capable of consent by reason of some factor other than being less than seventeen years old;

Only acts as set forth in subdivision one (1) are applicable here.

<p><u>Sexual Abuse: 3rd Degree: Penal Law §130.55</u> A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person.</p>	<p><u>Attempted Assault (Attempt to commit a crime: Penal Law §110.10)</u> A person is guilty of an attempt to commit a crime when, with intent to commit a crime, he engages in conduct which tends to effect the commission of such crime.</p>
<p><u>Stalking: 1st Degree: Penal Law §120.60</u> A person is guilty of stalking in the first degree when he or she commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 or stalking in the second degree as defined in section 120.55 of this article and, in the course and furtherance thereof, he or she:</p> <ol style="list-style-type: none"> 1. Intentionally or recklessly causes physical injury to the victim of such crime; or 2. Commits a class A misdemeanor defined in article one hundred thirty of this chapter, or a class E felony defined in section 130.25, 130.40, or 130.85 of this chapter, or a class D felony defined in section 130.30 or 130.45 of this chapter. 	<p><u>Stalking: 3rd Degree: Penal Law §120.50</u> A person is guilty of stalking in the third degree when he or she:</p> <ol style="list-style-type: none"> 1. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against three or more persons, in three or more separate transactions, for which the actor has not been previously convicted; or 2. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime, as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or 3. With intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or 4. Commits the crime of stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree.
<p><u>Stalking: 2nd Degree: Penal Law §120.55</u> A person is guilty of stalking in the second degree when he or she:</p> <ol style="list-style-type: none"> 1. Commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 of this article and in the course of and in furtherance of the commission of such offense: (i) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, shotgun, machine gun, electronic dart gun, electronic stun gun, cane sword, billy, blackjack, bludgeon, metal knuckles, chuka stick, sand bag, sandclub, slingshot, [fig 1] slungshot, shiriken, "Kung Fu Star", dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument or deadly weapon; or (ii) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or 2. Commits the crime of stalking in the third degree in violation of subdivision three of section 120.50 of this article against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or 3. Commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree as defined in subdivision four of section 120.50 of this article against any person; or 4. Being twenty-one years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury or death [fig 1]; or 5. Commits the crime of stalking in the third degree, as defined in subdivision three of section 120.50 of this article, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted. 	<p><u>Stalking: 4th Degree: Penal Law §120.45</u> A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:</p> <ol style="list-style-type: none"> 1. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or 2. causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or 3. is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.
<p><u>Strangulation: 2nd Degree: Penal Law §121.12</u> A person is guilty of strangulation in the second degree when he or she commits the crime of criminal obstruction of breathing or blood circulation, as defined in section 121.11 of this article, and thereby causes stupor, loss of consciousness for any period of time, or any other physical injury or impairment.</p>	<p><u>Strangulation: 1st Degree: Penal Law §121.13</u> A person is guilty of strangulation in the first degree when he or she commits the crime of criminal obstruction of breathing or blood circulation, as defined in section 121.11 of this article, and thereby causes serious physical injury to such other person.</p> <p><u>Grand Larceny: 3rd Degree: Penal Law §155.35</u> A person is guilty of grand larceny in the third degree when he or she steals property and:</p> <ol style="list-style-type: none"> 1. when the value of the property exceeds three thousand dollars, or 2. the property is an automated teller machine or the contents of an automated teller machine.

Identity Theft: 2nd Degree: Penal Law §190.79

A person is guilty of identity theft in the second degree when he or she knowingly and with intent to defraud assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby:

1. obtains goods, money, property or services or uses credit in the name of such other person in an aggregate amount that exceeds five hundred dollars; or
2. causes financial loss to such person or to another person or persons in an aggregate amount that exceeds five hundred dollars; or
3. commits or attempts to commit a felony or acts as an accessory to the commission of a felony; or
4. commits the crime of identity theft in the third degree as defined in section 190.78 of this article and has been previously convicted within the last five years of identity theft in the third degree as defined in section 190.78, identity theft in the second degree as defined in this section, identity theft in the first degree as defined in section 190.80, unlawful possession of personal identification information in the third degree as defined in section 190.81, unlawful possession of personal identification information in the second degree as defined in section 190.82, unlawful possession of personal identification information in the first degree as defined in section 190.83, unlawful possession of a skimmer device in the second degree as defined in section 190.85, unlawful possession of a skimmer device in the first degree as defined in section 190.86, grand larceny in the fourth degree as defined in section 155.30, grand larceny in the third degree as defined in section 155.35, grand larceny in the second degree as defined in section 155.40 or grand larceny in the first degree as defined in section 155.42 of this chapter

Identity Theft: 1st Degree: Penal Law §190.80

A person is guilty of identity theft in the first degree when he or she knowingly and with intent to defraud assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby:

1. obtains goods, money, property or services or uses credit in the name of such other person in an aggregate amount that exceeds two thousand dollars; or
2. causes financial loss to such person or to another person or persons in an aggregate amount that exceeds two thousand dollars; or
3. commits or attempts to commit a class D felony or higher level crime or acts as an accessory in the commission of a class D or higher level felony; or
4. commits the crime of identity theft in the second degree as defined in section 190.79 of this article and has been previously convicted within the last five years of identity theft in the third degree as defined in section 190.78, identity theft in the second degree as defined in section 190.79, identity theft in the first degree as defined in this section, unlawful possession of personal identification information in the third degree as defined in section 190.81, unlawful possession of personal identification information in the second degree as defined in section 190.82, unlawful possession of personal identification information in the first degree as defined in section 190.83, unlawful possession of a skimmer device in the second degree as defined in section 190.85, unlawful possession of a skimmer device in the first degree as defined in section 190.86, grand larceny in the fourth degree as defined in section 155.30, grand larceny in the third degree as defined in section 155.35, grand larceny in the second degree as defined in section 155.40 or grand larceny in the first degree as defined in section 155.42 of this chapter.

Grand Larceny: 4th Degree: Penal Law §155.30

A person is guilty of grand larceny in the fourth degree when he steals property and when:

1. The value of the property exceeds one thousand dollars; or
2. The property consists of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant; or
3. The property consists of secret scientific material; or
4. The property consists of a credit card or debit card; or
5. The property, regardless of its nature and value, is taken from the person of another; or
6. The property, regardless of its nature and value, is obtained by extortion; or
7. The property consists of one or more firearms, rifles or shotguns, as such terms are defined in section 265.00 of this chapter; or
8. The value of the property exceeds one hundred dollars and the property consists of a motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law, other than a motorcycle, as defined in section one hundred twenty-three of such law; or
9. The property consists of a scroll, religious vestment, a vessel, an item comprising a display of religious symbols which forms a representative expression of faith, or other miscellaneous item of property which:
 - (a) has a value of at least one hundred dollars; and
 - (b) is kept for or used in connection with religious worship in any building, structure or upon the curtilage of such building or structure used as a place of religious worship by a religious corporation, as incorporated under the religious corporations law or the education law.
10. The property consists of an access device which the person intends to use unlawfully to obtain telephone service.
11. The property consists of anhydrous ammonia or liquefied ammonia gas and the actor intends to use, or knows another person intends to use, such anhydrous ammonia or liquefied ammonia gas to manufacture methamphetamine.

Identity Theft: 3rd Degree: Penal Law §190.78

A person is guilty of identity theft in the third degree when he or she knowingly and with intent to defraud assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby:

1. obtains goods, money, property or services or uses credit in the name of such other person or causes financial loss to such person or to another person or persons; or
2. commits a class A misdemeanor or higher level crime.

Coercion: 2nd Degree: Penal Law §135.60

A person is guilty of coercion in the second degree when he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he or she has a legal right to engage, or compels or induces a person to join a group, organization or criminal enterprise which such latter person has a right to abstain from joining, by means of instilling in him or her a fear that, if the demand is not complied with, the actor or another will:

1. Cause physical injury to a person; or Cause damage to property; or Engage in other conduct constituting a crime; or Accuse some person of a crime or cause criminal charges to be instituted against him or her; or Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act; or Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or Use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his or her health, safety, business, calling, career, financial condition, reputation or personal relationships.

II. TERMINATION

Family Court Act §842 (2)(k):

In addition to foregoing provisions, the court may issue an order pursuant to section two hundred twenty-seven-c of the real property law, authorizing the party for whose benefit any order of protection has been issued to terminate a lease or rental agreement pursuant to section two hundred and twenty-seven-c of the real property law.

NY CLS REAL PROPERTY §227-c.(2016) Termination of residential lease by victims of domestic violence.
(copy provided in attached material)

III. EXAMPLES OF CATAGORIES THAT ARE NOT FAMILY OFFENSES

1. Alcoholism or alcohol abuse
2. Drug addiction or drug overdose
3. Refusal to pay bills or rent
4. Unplugging the internet
5. Name calling
6. ENDANGERING THE WELFARE OF A CHILD NOT A FAMILY OFFENSE
7. Mental illness
8. Suicidal
9. Cheating on significant other
10. Wishing the petitioner dead or a terminal illness

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Termination of residential lease by victims of domestic violence Citation: NY CLS Real P S 227-c

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Real Property Law
Article 7 Landlord and Tenant

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NY CLS Real P 5 227-c (2016)

S 227-ca Termination of residential lease by victims of domestic violence

1. In any lease or rental agreement covering premises occupied for dwelling purposes, a lessee tenant for whose benefit any order of protection has been issued by a court of competent jurisdiction, shall be permitted to terminate such lease or rental agreement and quit and surrender possession of the leasehold premises, and of the land so leased or occupied pursuant to the provisions of this section and to be released from any liability to pay to the lessor or owner, rent or other payments in lieu of rent for the time subsequent to the date of termination of such lease in accordance with subdivision two of this section.
2. (a) A lessee or tenant for whose benefit any order of protection has been issued by a court of competent jurisdiction, may, on ten days' notice to the lessor or owner of the premises occupied by such person, and to any co-tenants of such lessee or tenant, seek an order of the court that issued such order of protection authorizing such lessee or tenant to terminate such party's lease or rental agreement. Such court shall hear any such application at any time that the order of protection remains in effect, whether or not the action in which it was issued remains open.

(b) The court shall issue such order only if the applicant lessee or tenant establishes to the satisfaction of the court that:

(i) notwithstanding the existence of an order of protection there continues to exist a substantial risk of physical or emotional harm to such person or such person's child from the party covered by the order of protection if the parties remain in the premises and that relocation will substantially reduce such risk;

(ii) the lessee or tenant attempted to secure the voluntary consent of the lessor or owner to terminate the lease or rental agreement and the lessor or owner refused to permit termination;

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Three steps for termination of lease

1. In *any* lease or rental agreement covering premises occupied for dwelling purposes, a lessee or tenant for whose benefit *any* order of protection has been issued...shall be permitted to terminate such lease or rental agreement and quit and surrender possession of the leasehold premises, and of the land so leased or occupied...to be released from any liability to pay to the lessor or owner, rent or other payments in lieu of rent for the time subsequent to the date of termination of such lease.
2. A lessee or tenant for whose benefit any order of protection has been issued...may, on ten days notice to the lessor or owner to the premises occupied by such person, and to any co-tenants of such lessee or tenant, seek an order of the court that issued such order of protection authorizing such lessee or tenant to terminate such party's lease or rental agreement.
Such court shall hear any such application at anytime that any order of protection remains in effect, whether or not the action in which it was issued remains open.
 - (a) The court shall issue such order only if the applicant lessee or tenant establishes to the satisfaction of the court that:
 - (i) Notwithstanding the existence of an order of protection there continues to exist a substantial risk of physical emotional harm to such person or such person's child from the party covered by the order of protection if the parties remain in the premises and that relocation will substantially reduce such risk;
 - (ii) The lessee or tenant attempted to secure the voluntary consent of the lessor or owner to terminate the lease or rental agreement and

**the lessor or owner refused to permit
termination;**

Matter of Johnson v Palumbo
2017 NY Slip Op 06534
Decided on September 20, 2017
Appellate Division, Second Department
Brathwaite Nelson, J.
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on September 20, 2017 SUPREME COURT OF THE STATE OF NEW YORK
 Appellate Division, Second Judicial Department
 JOHN M. LEVENTHAL, J.P.
 JOSEPH J. MALTESE
 HECTOR D. LASALLE
 VALERIE BRATHWAITE NELSON, JJ.

2014-09233
 (Index No. 3458/14)

[*1]In the Matter of Amanda Chambers Johnson, petitioner,

v

Margaret Palumbo, administrator of the City of Poughkeepsie Office of Section 8 Housing, et al., respondents.

PROCEEDING pursuant to CPLR article 78 to review a determination of a hearing officer dated March 25, 2014, which, after a hearing, confirmed the determination of the City of Poughkeepsie Office of Section 8 Housing to terminate the petitioner's participation in the Section 8 Housing Choice Voucher Program (*see* 42 USC § 1437f[b] [1]), which proceeding was transferred to this Court pursuant to CPLR 7804(g) by order of the Supreme Court (Denise M. Watson, J.), entered in Dutchess County on October 1, 2014.

Legal Services of the Hudson Valley, Poughkeepsie, NY (Jared L. Gilman and Vinita Kamath of counsel), for petitioner.

McCabe & Mack LLP, Poughkeepsie, NY (David L. Posner and Andrea L. Gellen of counsel), for respondents.

BRATHWAITE NELSON, J.

The petitioner, Amanda Chambers Johnson, lived in an apartment in Poughkeepsie with her five children with the assistance of rent subsidy benefits under the Section 8 Housing Choice Voucher Program (*see* 42 USC § 1437f[b][1]). On February 11, 2014, she was notified that her benefits under the program were being terminated due to alleged violations of the program rules. After an administrative hearing, the determination to terminate her benefits was confirmed based upon the finding that she was obligated, but failed, to request permission to add Antwone Jordan-McGill (hereinafter McGill) as an occupant to her subsidized apartment. We consider whether, under these circumstances, the petitioner was entitled to the housing protections of the Violence Against Women Act (hereinafter the VAWA; now 34 USC 12291 *et seq.*) based upon uncontested hearing evidence establishing that she was subjected to an escalating pattern of stalking and abusive behavior and domestic violence by McGill, a former intimate partner, whose course of abusive and violent conduct against her included his unwanted presence in her apartment. For the reasons that follow, we conclude that she was entitled to the housing protections of the VAWA, which prohibited her termination from the program on this ground (*see* 42 USC § 14043e-11[b][2]).

I. Factual and Procedural Background

The respondent City of Poughkeepsie Office of Section 8 Housing (hereinafter the Agency) administers the federally funded Section 8 Housing Choice Voucher Program, which provides rent subsidies to low-income tenants (*see* 42 USC § 1437f). The petitioner had been a [*2]participant in the program for approximately 10 years and had resided with

her children in Poughkeepsie at a particular apartment (hereinafter the contract unit) with the assistance of the program for approximately 7 years. Through a "Notice of Termination" letter dated February 11, 2014, the Agency notified the petitioner that it had decided to terminate her program assistance on the ground that she had violated the Housing and Urban Development (hereinafter HUD) Rules and Regulations. Specifically, the notice alleged that during the Section 8 recertification process on November 12, 2013, the petitioner had failed to fully disclose her household composition and all of the income attributable to her household, and had failed to request the Agency's approval to add another family member as an occupant to the contract unit. It further alleged that the Agency had learned that McGill had lived with the petitioner at the contract unit from June 2012 until December 2013, at which time he was arrested. It is undisputed that McGill remained incarcerated from the date of that arrest throughout these proceedings. The notice further advised the petitioner that if she did not agree with the decision to terminate her participation in the program, she had the right to request an "informal hearing" in accordance with 24 CFR 982.555 of the HUD Rules and Regulations. Federal regulations governing the Housing Choice Voucher Program require that, prior to the termination of housing assistance payments under an outstanding housing assistance payments contract, the participant be given the opportunity for an informal hearing to determine whether the agency's decision to terminate assistance is in accordance with the law (*see* 24 CFR 982.555[a]).

The petitioner requested such a hearing, which was held on March 19, 2014. In accordance with the governing rules and regulations, the Agency and the petitioner were each given the opportunity to present evidence (*see* 24 CFR 982.555[e][5]), and the hearing officer allowed each to submit a written summation to assist with his determination. The Agency presented the testimony of one of its housing program assistants and the testimony of a private investigator hired by the Agency, as well as documentary evidence. The program assistant testified that his boss had received an anonymous phone call from a person reporting that someone was living at the contract unit with the petitioner. Although the program assistant did not know when that anonymous phone call was received, the investigator testified that McGill was already incarcerated on charges stemming from his December 2013 arrest when she received the matter to investigate. The investigator further testified that because McGill was incarcerated, she did not conduct any "investigation or personal surveillance" of the

contract unit. Her investigation consisted solely of gathering documents by submitting Freedom of Information Law (FOIL) requests to various governmental agencies. Through this investigation, she obtained copies of, among other things, McGill's pay stubs, his driver's permit application, and records of his parole home visits by New York State Department of Corrections and Community Supervision parole officers, all of which listed the contract unit as McGill's address. The parole records also indicated that McGill's parole officer had some form of contact with McGill at the contract unit during some visits made between June 2012 and December 2013. In addition to these documents, the Agency submitted a Domestic Incident Report dated December 19, 2013, completed by a police officer, which reported an incident, described more fully by the petitioner in her testimony at the hearing, in which McGill pursued the petitioner to a police station parking lot, where he punched her twice in the face before being arrested. The Domestic Incident Report indicated that the parties did not live together, but it also listed the contract unit as the address for both the petitioner and McGill. Based on this documentary evidence establishing that McGill had used the contract unit as his address, the Agency asserted that McGill was residing at the contract unit and the petitioner's housing assistance benefits were properly terminated because she failed to request Agency approval to add him as an additional occupant to the unit and disclose his income during the recertification process, despite signing documents on November 12, 2013, which contained the relevant rules obligating her to do so.

The petitioner testified at the hearing and submitted a number of documents. She took the position that McGill did not live with her at the contract unit and that the evidence submitted by the Agency indicating that McGill was residing there existed as a result of domestic violence and stalking. In her testimony, the petitioner described an escalating pattern of stalking and abusive behavior and domestic violence by McGill that culminated in the December 2013 incident leading to his arrest. The petitioner testified as follows. In June 2012, she permitted McGill, who was then a friend, to use the contract unit address for purposes of registering for parole; however, this was meant to be temporary and at no point did he actually live in the contract unit. In about July 2012, she and McGill entered into an intimate relationship, she "immediately" became pregnant, and McGill began to act controlling and domineering, eventually starting to threaten, intimidate, and [*3]harass her. He wanted the petitioner to have an abortion and threatened to "give [her] an abortion, if [she] wouldn't go and get one." McGill "just went

from one person to a totally different person." At first, the petitioner told him to leave her alone, that she did not "believe in abortion," and he would not need to be part of the baby's life. After that, McGill "became terrifying." He started asking the petitioner for keys to her apartment. She told him "no," but, against her wishes, McGill took a spare set of keys, which the petitioner had kept for her children. McGill would disappear for periods of time and then suddenly reappear. He began entering the petitioner's home at will, "whenever he felt like it," and told her that he would never give her back her keys.

McGill began to call the petitioner "over, and over, and over," 30 to 40 times in succession, until she would answer the phone, including times when she was at work. If the petitioner did not answer when McGill called, he would either find her or wait for her at her home and smash her cell phone. He smashed her cell phone on four occasions between October 2012 and June 2013. The petitioner became "truly terrified" of McGill, who often would "go at [her]," spit in her face, scream at her, and threaten her.

The petitioner testified that beyond the day he asked to use her address, McGill did not ask her permission for anything. The petitioner was not aware that McGill had used the contract unit address with his employer. His pay stubs did not come to her apartment. Nor was she aware that he had used the contract unit address when he applied for a driver's permit. She became aware of this fact when the permit was delivered to her apartment. She gave the permit to McGill and did not question him about it because she was scared of him. The petitioner maintained that from the time period of June 2012 through December 2013, although McGill used the keys he took to enter her apartment 48 to 100 times, he stayed overnight in her apartment at most 20 times. At the time, he told her that he was living with his brother, but since his incarceration in December 2013, the petitioner heard that he had been living with other women. The petitioner explained how she would contact McGill when his parole officer came to her apartment to conduct a home visit. If the visit was unannounced, she would rush to call McGill before the parole officer did because if McGill did not hear from the petitioner first, he would say that she was "trying to set him up." He would threaten, "You're gonna dig yourself a hole, and nobody's gonna find you." According to the petitioner, McGill would "just go off" if he heard something he did not like. As a result, she tried to "play nice," and did not confront him regarding his continued use of her address with his parole officer, his unauthorized access to her home, or his unauthorized use of her address on his driver's permit. The

petitioner testified that McGill was "just a very wicked individual and [she] truly could not have done anything different than what [she] did to survive." When pressed on cross-examination to explain why she did not seek an order of protection prior to December 2013 or try to stop McGill from accessing her apartment sooner, the petitioner replied, "I know it's hard to understand. You never think that someone will control you . . . But when you are in that situation, it's a totally different world . . . When you are scared of somebody and you have five kids to take care of, to get ready for school, to got to work, to put on a smile every single day, it changes the dynamic of things that become important." The petitioner felt that McGill's use of her address and the taking of her keys was a means for him to control, abuse, and manipulate her.

McGill's threats escalated into physical violence on December 19, 2013, when the incident resulting in his arrest occurred. The petitioner testified that she decided to get her keys back from McGill that day because her son was turning 15, and she realized that she "just could not do it anymore, being scared all the time" and having her children witness McGill's abusive and domineering behavior toward her. The petitioner and her cousin drove, in the petitioner's vehicle, to McGill's workplace at the time of his lunch break. The petitioner falsely told McGill that she could not find her keys, that representatives from the Agency were at the contract unit, and that she needed to get the spare set of keys from him so that she could let them into the apartment to conduct an inspection. McGill handed her the keys, but she was shaking. The petitioner turned to walk away, and McGill said, "Wait a minute . . . What are you doing?" The petitioner got into her vehicle and her cousin started to drive away. McGill got into his vehicle and pursued. He called the petitioner on her cell phone and told her to pull over. The petitioner refused and said, "I just can't take it anymore. I can't live like this anymore. Just leave me alone." McGill sped up and repeatedly told the petitioner to "pull over. I've got something for you." He tried to cut off the petitioner's vehicle, but the petitioner's cousin was able to drive to a police station. At the police station, the petitioner exited her vehicle. McGill exited his vehicle, approached the petitioner, and accused her of having "tricked him." Before the petitioner could respond, McGill punched her in the face, [*4]chipping her tooth. He punched her again in the face before police officers intervened and arrested McGill. In addition to the above testimony, the petitioner submitted into evidence police department Domestic Incident Reports, criminal complaints, a Criminal Court order of protection, a family offense petition, and a Family Court order of protection. These documents pertained to the

December 19, 2013, incident, as well as subsequent violations of the orders of protection. Asked why the Domestic Incident Report listed McGill's address as being at the contract unit, the petitioner testified that the police used the address listed on McGill's driver's permit.

After the hearing, both the Agency and petitioner submitted written summations to the hearing officer. In its summation, the Agency affirmatively argued that it had not terminated the petitioner's housing benefits in violation of the VAWA because at the time the petitioner's benefits were terminated, it was aware only of the December 2013 incident of domestic violence, and its allegation of unauthorized occupancy stemmed from McGill's occupancy from June 2012 to December 2012. The Agency also cited the petitioner's failure to report, prior to the hearing, that she was a victim of domestic violence as a basis for rejecting her testimony, and denying her the protection of the statute. In her written summation, the petitioner contended that she was entitled to the protection of the VAWA because, to the extent that McGill lived in the contract unit, he did so because she feared him and was "scared of what would happen if she changed the status quo."

In a decision dated March 25, 2014, the hearing officer confirmed the Agency's termination of the petitioner's participation in the Section 8 Housing Choice Voucher Program. The hearing officer found undisputed the facts that McGill had used the contract address for the purposes of satisfying a condition of his parole, to obtain a driver's permit, and for employment purposes, and that McGill assaulted the petitioner on December 19, 2013, and had since been incarcerated. Based on the parole records, which indicated that a parole officer had contact with McGill at the contract unit during certain early morning and late evening visits, the hearing officer rejected the petitioner's testimony that McGill did not reside at the contract unit, and found that McGill had resided with the petitioner "at least for some period." He therefore found, by a preponderance of the evidence, that the petitioner had failed to request permission to add a family member as required by the HUD Rules and Regulations. The hearing officer stated that the petitioner bore the burden of proving "first, that she was a victim of domestic violence and second, that her actions were as a result of or related to that violence." Although he did not discredit the petitioner's testimony of the nature of her relationship with McGill and how McGill came to possess keys to the contract unit and use it as his address, the hearing officer

nonetheless concluded that there was no evidence of violence or fear in June of 2012, and even were there evidence of violence that early, he "fail[ed] to see how that fear would excuse the [petitioner from] requesting to add another family member." Consequently, the hearing officer found no basis to apply the VAWA in this case.

The petitioner thereafter commenced this CPLR article 78 proceeding in the Supreme Court seeking review of the determination, arguing, among other things, that the hearing officer erred as a matter of law in concluding that the VAWA did not prevent her tenancy from being terminated. In an order entered October 1, 2014, the Supreme Court transferred the proceeding to this Court upon finding that one of the issues raised in the petition was whether the determination was supported by substantial evidence (*see* CPLR 7804[g]) .

II. Discussion

Originally enacted in 1994, one of the VAWA's purposes was to provide greater protections to victims of domestic violence (*see* Violent Crime Control and Law Enforcement Act of 1994, Pub L 103-322, Tit IV, 108 stat 1796 [42 USC § 13701 Note]). In 2005, it was re-authorized and expanded to include, among other things, protection for victims of domestic violence who receive publicly assisted housing benefits, including participants of the Section 8 Housing Choice Voucher Program (*see* Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub L 109-162, Tit VI, 119 stat 2960 [42 USC § 13701 Note]; 42 USC § 14043e *et seq.*). In expanding the VAWA to encompass certain public housing programs, Congress acknowledged that "[t]here is a strong link between domestic violence and homelessness," and "[w]omen and families across the country are being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence" (42 USC § 14043e[1], [3]). Domestic violence has caused shelter populations to increase because of the scarcity of housing (*see* Mireya Navarro, *Homeless, Because They Are Abused at Home*, NY Times, Nov. 11, 2014, § A at 1, col 0). The purpose of the VAWA, as applied to public housing, is to reduce domestic violence and stalking, among other things, and to prevent homelessness (*see* [*5]42 USC § 14043e-1). To that end, the VAWA provides that, in general,

"An applicant for or tenant of housing assisted under a covered housing program may not be denied admission to, denied assistance under, terminated from participation in, or evicted from the housing on the basis that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy" (42 USC § 14043e-11[b](1)).

As relevant here, the VAWA specifically provides that an incident of actual or threatened domestic violence, dating violence, sexual assault, or stalking, shall not be construed as a serious or repeated lease violation, or good cause for terminating assistance to the victim (*see* 42 USC § 14043e-11[b](2)[A], [B]).

Notwithstanding the above, even if a tenant has established that he or she is a victim under the VAWA, a public housing authority may terminate assistance on other independent grounds. In that regard, the VAWA does not limit the ability of a public housing authority to terminate assistance for a lease violation unrelated to domestic violence, dating violence, or stalking, provided that the public housing authority does not subject an individual who has been the victim of such violence to a more demanding standard than other tenants (*see* 42 USC § 14043e-11[b](3)[C][ii]; *see also* 24 CFR 5.2005[d](2)^{FN11}).

Here, the hearing officer upheld the termination of the petitioner's participation in the Housing Choice Voucher Program on the ground that McGill resided with the petitioner, therefore she was obligated to request permission to add him as an occupant of the unit, and her failure to request such approval was a violation of her obligations under the program warranting termination of her participation in the program. The regulations governing the Section 8 Housing Choice Voucher Program authorize, but do not require, a public housing agency to terminate program assistance for a participant if the participant violates any obligations under the program (*see* 24 CFR 982.552[c](2)[i]). The petitioner's obligations under the program included the duty to request the Agency's written approval to add any other family member to the contract unit. The petitioner signed a form on November 12, 2013, acknowledging that violating this obligation was grounds for termination of her housing assistance. We note that although the hearing officer suggested in his determination that the petitioner was obligated to seek the subject approval as early as June 2012, the Agency's notice of termination identified the November 12, 2013, recertification process and the documents that the petitioner signed at that time as the

basis of the petitioner's alleged violation. Consequently, it is the petitioner's failure to seek approval to add McGill as an occupant at that point in time that is at issue (*see generally* 24 CFR 982.555[e][2]). In this proceeding pursuant to CPLR article 78, we accept, as we must, the hearing officer's factual determination that McGill resided with the petitioner "at least for some period" (*see Matter of Berenhaus v Ward*, 70 NY2d 436, 443; *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 230). However, we find that the hearing officer erred in his legal conclusion that the petitioner was not entitled to the protections of the VAWA.

As noted above, the VAWA provides that incidents of actual or threatened domestic violence or stalking shall not be construed as good cause for terminating assistance under a covered housing program (*see* 42 USC § 14043e-11[b][2][B]). The VAWA defines "domestic violence" as felony or misdemeanor crimes of violence committed by, among others, a current or former intimate partner of the victim, a person with whom the victim shares a child in common, or a person who is cohabiting with or has cohabitated with the victim as an intimate partner (*see* 42 USC § 13925[a][8]; *see also* 24 CFR 5.2003). It defines "stalking" to mean engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for her safety or the safety of others, or suffer substantial emotional distress (*see* 42 USC § 13925[a][30]; *see also* 24 CFR 5.2003).

The petitioner's testimony established that throughout her relationship with McGill, [*6]which spanned from July 2012 through December 2013, McGill threatened, intimidated, harassed, and physically assaulted her. This unrefuted testimony established incidents of domestic violence and a course of conduct by McGill directed at the petitioner that would cause a reasonable person to fear for her safety or suffer substantial emotional distress. Moreover, his presence at her home and continued access to the contract unit was an integral part of the intimidation. There was no evidence presented at the hearing from which the hearing officer could conclude that the petitioner voluntarily gave McGill permission to reside at the contract unit from June 2012 through December 2013, or that his ultimate residency there "for some period of time" was unrelated to the domestic violence he perpetrated upon her (*cf. Hammond v Akron Metropolitan Housing Authority*, 2011-Ohio-2635 [9th Dist.]). Indeed, the hearing officer did not make such findings. Instead, he concluded that any fear experienced by the petitioner did not excuse

her from requesting to add McGill as an occupant of the contract unit. This conclusion reflects a misinterpretation of the statute. The VAWA seeks to provide greater protections to victims of violence and intimidation perpetrated by an intimate partner. Here, in light of the uncontested evidence that McGill's presence in and access to the contract unit was the result of conduct that constitutes domestic violence and stalking as defined by the VAWA, it would be unreasonable and inconsistent with the purpose of the statute to require the petitioner to seek permission to add McGill as an occupant of the unit. Indeed, requiring the petitioner to do so would effectively require her to legitimize his access to the contract unit by making him an established part of her household, thus giving him greater power and control over her. The hearing officer's failure to recognize that McGill's presence in and access to the contract unit was the result of domestic violence did not take into account the dynamics of domestic violence where the victim very often fails to report the abuser to the police, medical professionals when being treated for injuries inflicted by a batterer, or even to her family (*see Nicholson v Williams*, 203 F Supp 2d 153 [ED NY], *affd in part sub nom. Nicholson v Scoppetta*, 344 F3d 154 [2d Cir]). To uphold a conclusion that the petitioner violated her obligation under the Section 8 Housing Choice Voucher Program by failing to seek permission to add McGill as an occupant would place her in the untenable position of having to either choose between becoming more deeply embroiled in an abusive situation by legitimizing his presence in the contract unit, or facing the loss of the housing assistance benefits she relies upon for herself and her five children. This is a choice that a domestic violence victim should not have to make (*see Nicholson v Williams*, 203 F Supp 2d 153, *affd in part sub nom. Nicholson v Scoppetta*, 344 F3d 154; *see also Nicholson v Scoppetta*, 3 NY3d 357), and we decline to read the VAWA in such a way, which is plainly inconsistent with its salutary purposes (*see generally* 42 USC § 14043e-1).

We also reject the Agency's contention that the petitioner is not entitled to the protection of the VAWA because she did not report that she was a victim of domestic violence prior to the informal hearing, and did not provide third-party documentation to corroborate her testimony. As to the timeliness of the petitioner's assertion, no statutory or regulatory provisions dictate when and how a tenant must assert her right to protections under the VAWA (*cf.* 42 USC § 14043e-11; 24 CFR 5.2005). Furthermore, the petitioner had no cause to assert the protections of the VAWA until she received the notice of termination from the Agency, which directed her to request an informal hearing if she

disagreed with the decision to terminate her participation in the program. As to the petitioner's burden of proof, the VAWA places no burden of proof in the first instance on a person seeking the protections of the VAWA. If a tenant of covered housing represents that she is "entitled to protection under [the VAWA]" (42 USC § 14043e-11[c][1]), documentation is not required (*see* 42 USC § 14043e-11[c][5]; *see also* 24 CFR 5.2007[b][3]). Nonetheless, the public housing agency may, in its discretion, request that the tenant submit a form of documentation described in the statute (*see* 42 USC § 14043e-11[c][1]; *see also* 24 CFR 5.2007[a][1]). However, it cannot deny relief for protection under the VAWA unless it has provided the individual with a written request for such documentation and the individual has failed to provide documentation within the specified time (*see* 42 USC § 14043e-11[c][1], [2]; *see also* 24 CFR 5.2007[a]). Here, the Agency never made a written request for documentation which would have prompted the petitioner's obligation to provide such documentation (*see* 42 USC § 14043e-11[c][2]; *see also* 24 CFR 5.2007[a][2]).

In any event, the petitioner's testimony at the informal hearing was sufficient to establish that she was entitled to the protections of the VAWA (*see* 42 USC § 14043e-11). Where the public housing agency has made a written request for documentation, the tenant may submit any one of the specified forms of documentation "at the discretion of the tenant" (24 CFR 5.2007[b][1]; [*7]*see* 42 USC § 14043e-11[c]). The choices include a HUD-approved certification form, which may be based solely on the personal signed attestation of the victim (*see* 42 USC § 14043e-11[c][3][A]; 24 CFR 5.2007[b][1][i]), and, at the discretion of the housing agency, "a statement or other evidence provided by an applicant or tenant" (42 USC § 14043e-11[c][3][D]; *see* 24 CFR 5.2007[b][1][iv]). "[A]s long as the victim provides a HUD-approved certification form, third-party documentation, a verbal statement, or other corroborating evidence, the victim is statutorily entitled to [the] protections [of the VAWA]" (HUD Programs: Violence Against Women Act Conforming Amendments, 75 Fed Reg 66246-01, 66251 [2010]). Here, because the Agency never made a written request for documentation, there was no occasion for the petitioner to respond accordingly. The question of the VAWA's application arose in the nature of the informal hearing where the petitioner testified as detailed above, under oath. Moreover, her sworn hearing testimony, which provided far more detail than called for by the HUD-approved certification form, was sufficient to document the occurrences of domestic violence and stalking perpetrated against her by

McGill (*cf.* 24 CFR 5.2007), and established that she was statutorily entitled to the protections of the VAWA. Contrary to the Agency's contention, no third-party documentation of the petitioner's account was necessary.

Finally, although not determinative of the legal issue before us, we note that under the HUD rules and regulations, "[c]overed housing providers are encouraged to undertake whatever actions permissible and feasible under their respective programs to assist individuals residing in their units who are victims of domestic violence, dating violence, sexual assault, or stalking to remain in their units or other units under the covered housing program" (24 CFR 5.2009[c]). Here, the Agency's investigation, which was prompted by an unidentified anonymous caller, did not commence until after the December 19, 2013, assault resulting in McGill's arrest. By the time the Agency decided to terminate the petitioner's participation in the program, McGill had been incarcerated for nearly two months for assaulting the petitioner, and plainly was no longer living in

the contract unit. McGill's continuing acts of harassment, intimidation, and domestic violence against the petitioner were well documented before the Agency. Under the circumstances, the Agency's determination to exercise its discretion in a way that would result in the petitioner's loss of her unit was inconsistent with the VAWA.

In sum, we find that the hearing officer's determination was affected by an error of law and rendered in violation of the VAWA (*see* 42 USC § 14043-11[b][1], [2]; CPLR 7803[3]). The petitioner's alleged violation of the program rules was her failure to seek Agency approval to add McGill as an occupant to the contract unit. However, the unrefuted evidence at the informal hearing established that McGill's residency at the contract unit was a result of the intimidation, harassment, and domestic violence that he carried out against the petitioner. The petitioner did not willingly allow McGill's very limited residency in her apartment. Adding McGill as an occupant to the contract unit would have increased McGill's control over the petitioner and furthered the fear-inducing course of conduct which he had directed at her. On the record presented, we are persuaded that the termination of the petitioner's participation in the program and McGill's abusive and violent conduct against the petitioner are inextricably intertwined. Under these circumstances, we hold, as a matter of law, that the petitioner was entitled to the housing protections of the VAWA, which prohibited the Agency from terminating her participation in the program on this ground.

In light of our determination, we need not reach the petitioner's remaining contentions, including the substantial evidence issue.

Accordingly, the petition is granted, the determination is annulled, and the matter is remitted to the respondents to reinstate the petitioner's participation in the Section 8 Housing Choice Voucher Program retroactive to March 25, 2014.

LEVENTHAL, J.P., MALTESE and LASALLE, JJ., concur.

ADJUDGED that the petition is granted, on the law, without costs or disbursements, the determination is annulled, and the matter is remitted to the respondents to reinstate the petitioner's participation in the Section 8 Housing Choice Voucher Program retroactive to March 25, 2014.

ENTER:

Aprilanne Agostino

Clerk of the Court

Footnotes

Footnote 1: We note that some of the relevant HUD regulations were amended in November 2016 in a manner that affected the internal numeration of some of the regulations cited to herein. Because the amendments did not affect the substance of the regulations insofar as they relate to this proceeding, we cite to the current version of the regulations.

[Return to Decision List](#)

Theresa Whelan is a Suffolk County Family Court Judge and has held that position since 2008, following her election in 2007. She was appointed Supervising Judge of the Suffolk County Family Court in February 2016. Judge Whelan has served on the Suffolk County Attorney for Child Advisory Committee since 2013 and as Supervising Judge, she has been the Chair since February 2016. Since 2009, she has been Lead Judge of the Suffolk County Child Welfare Court Improvement Project, a collaborative whose mission is to improve court practice in order to achieve more timely permanency and better outcomes in child welfare matters. Chief Administrative Judge Larry Marks recently appointed her to the Family Court Advisory and Rules Committee. Judge Whelan hears primarily child abuse and neglect cases and has presided over a Family Treatment Court part since 2008. Judge Whelan began her law career in 1988 as a Suffolk County Assistant County Attorney. In 1990 she began her career in the judicial system, serving as Principal Law Clerk to three distinguished Supreme Court Justices. She is an active member of the Suffolk County Bar Association, where she was co-chair of the Family Court Committee from 2013 - 2016. She was a member of the Attorney for Child Task Force and she and the other members received the Suffolk County Bar Association's President's Award in 2016 for their work. She is past president of the Suffolk County Women's Bar Association and is a member of the Suffolk County Women in the Court's Committee, where, in the past she has chaired the Breast Cancer Awareness Committee and co-authored informational booklets on family violence. She is the 1998 recipient of the New York State Bar Association's Outstanding Young Lawyer Award. Judge Whelan received a Bachelor of Arts degree in English and a Master of Science degree in Policy Analysis and Public Management from the State University of New York at Stony Brook. She holds a Juris Doctor from Albany Law School.

Matter of Jihad H. (Fawaz H.)

Supreme Court of New York, Appellate Division, Second Department

June 28, 2017, Decided

2016-11297 (Docket Nos. N-6543-16, N-6544-16, N-6545-16, N-6546-16)

Reporter

151 A.D.3d 1063 *; 58 N.Y.S.3d 478 **; 2017 N.Y. App. Div. LEXIS 5147 ***; 2017 NY Slip Op 05224 ****; 2017 WL 2800213

[****1] In the Matter of Jihad H. (Anonymous). Administration for Children's Services, appellant; Fawaz H. (Anonymous), respondent. (Proceeding No. 1); In the Matter of Adam H. (Anonymous). Administration for Children's Services, appellant; Fawaz H. (Anonymous), respondent. (Proceeding No. 2); In the Matter of Kareem H. (Anonymous). Administration for Children's Services, appellant; Fawaz H. (Anonymous), respondent. (Proceeding No. 3); In the Matter of Monerah H. (Anonymous). Administration for Children's Services, appellant; Fawaz H. (Anonymous), respondent. (Proceeding No. 4)

Notice: THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.

THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

Core Terms

neglect, domestic violence, impairment, oldest child, petitions, eldest child, witnessed, drugs, disposition hearing, emotional condition, physical impairment, imminent danger, using drugs, drug use, determinations, fact-finding, caseworker, reinstate, arrest, facie, remit, hit

Counsel: [***1] Zachary W. Carter, Corporation Counsel, New York, NY (Fay Ng and Amanda Sue Nichols of counsel), for appellant.

Brooklyn Defender Services, Family Defense Practice, Brooklyn, NY (Jessica Marcus of counsel), for respondent.

Seymour W. James, Jr., New York, NY (Tamara A. Steckler and Riti P. Singh of counsel), attorney for the children.

Judges: JOHN M. LEVENTHAL, J.P., L. PRISCILLA HALL, SYLVIA O. HINDS-RADIX, JOSEPH J. MALTESE, JJ. LEVENTHAL, J.P., HALL, HINDS-RADIX and MALTESE, JJ., concur.

Opinion

[478] [*1063] DECISION & ORDER**

Appeal by the petitioner from an order of the Family Court, Kings County (Ann E. O'Shea, J.), dated October 28, 2016. [**479] The order, after a fact-finding hearing, dismissed the neglect petitions against the father.

ORDERED that order is reversed, on the law and the facts, without costs or disbursements, the petitions are reinstated, findings are made that the father neglected the subject children, and the matter is remitted to the Family Court, Kings County, for a dispositional hearing to be held with all convenient speed, and determinations thereafter.

The Administration for Children's Services commenced these proceedings pursuant to [Family Court Act article 10](#), alleging that the father neglected his four children by his drug [***2] use and subjecting the mother to domestic violence in their presence. At the fact-finding hearing, the evidence established that the father engaged in an act of domestic violence against the mother, in the presence of the two oldest children, and within the hearing of the third oldest child, resulting in police being called to the house and the defendant being placed under arrest.

Upon the father's arrest, illegal drugs were found on his person, and he later pleaded guilty to two counts of attempted criminal possession of a controlled substance in the seventh degree. The eldest child told a

151 A.D.3d 1063, *1063; 58 N.Y.S.3d 478, **479; 2017 N.Y. App. Div. LEXIS 5147, ***2; 2017 NY Slip Op 05224, ****1

caseworker that the father had hit the mother on prior occasions when he was using drugs, and he could tell when the father was using drugs by his appearance. The second oldest child told the caseworker that he observed the father under the influence of drugs—a state that he recognized when the father nodded while sitting down. The father did not testify at the hearing.

At the conclusion of the hearing, the Family Court credited the witnesses' testimony, which the court found established that the father hit and choked the mother in the presence of two of the children, the eldest child was pushed by [***3] the father [*1064] when he attempted to intervene, a third child was not in the room when the incident occurred but heard noise, and the three oldest children reported that they had witnessed the father engage in acts of domestic violence against their mother and had also witnessed the father under the influence of drugs. Nevertheless, the court dismissed the petitions on the ground that no physical impairment or risk of physical impairment of the children was established, nor was the mental state of the children explored. The petitioner appeals.

"To establish neglect, the petitioner must demonstrate, by a preponderance of the evidence, (1) that the child[ren]'s physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired, and (2) that the actual or threatened harm to the child[ren] is due to the failure of the parent or caretaker to exercise a minimum degree of care in providing the child[ren] with proper supervision or guardianship" (*Matter of Chaim R. [Keturah Ponse R.]*, 94 AD3d 1127, 1130, 943 N.Y.S.2d 195). The misuse of drugs inducing a "state of . . . intoxication . . . incompetence, or a substantial impairment of judgment" is prima facie evidence of neglect (*Family Ct Act § 1046[a][3]*; see *Matter of Keira O.*, 44 AD3d 668, 669, 844 N.Y.S.2d 344). Here, the evidence was sufficient to establish a prima facie case of neglect.

Contrary [***4] to the Family Court's conclusion, impairment or an imminent danger of impairment to the physical, mental, or emotional condition of the subject children could be inferred from the father's conduct (see *Matter of Lavountae A.*, 57 AD3d 1382, 870 N.Y.S.2d 676, *affd* 12 N.Y.3d 832, 908 N.E.2d 904, 880 N.Y.S.2d 914). A single act of domestic violence in the presence of a child (see [**480] *Matter of Andrew Y.*, 44 AD3d 1063, 844 N.Y.S.2d 408), or within the hearing of a child (see *Matter of Moises G. [Luis G.]*, 135 A.D.3d 527, 24 N.Y.S.3d 239), may be sufficient for a neglect finding. In this case, there was evidence of repeated acts of

domestic violence while the children were present in the household (see *Matter of Joshua V. [Rahsaan J.]*, 137 A.D.3d 1153, 28 N.Y.S.3d 97), which the eldest child attributed to the father's drug use. Furthermore, the father did not testify, warranting the "strongest negative inference" against him (see *Matter of Zaire D. [Benellie R.]*, 90 A.D.3d 923, 935 N.Y.S.2d 581).

Under these circumstances, the Family Court's findings that the subject children were not neglected are not supported by the record. Accordingly, we reverse the order, reinstate the petitions, find that the children are neglected within the meaning of *Family Court Act § 1012(f)*, and remit the matter to the Family Court, Kings County, for a dispositional hearing and determinations thereafter.

LEVENTHAL, J.P., HALL, HINDS-RADIX and MALTESE, JJ., concur.

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As of: October 23, 2017 1:48 PM Z

Matter of Kiara C. v David C.

Supreme Court of New York, Appellate Division, Second Department

June 21, 2011, Decided

2010-08890, 2010-08892 (Docket No. N-962-10)

Reporter

85 A.D.3d 1025 *; 926 N.Y.S.2d 566 **; 2011 N.Y. App. Div. LEXIS 5407 ***; 2011 NY Slip Op 5492 ****

[****1] In the Matter of Kiara C., an Infant. Suffolk County Department of Social Services, Respondent; David C., Appellant.

Core Terms

impaired, emotional condition, domestic violence, neglect, preponderance of the evidence, imminent danger, degree of care, fact-finding, becoming, disbursements, costs

Headnotes/Syllabus

Headnotes

Parent and Child--Abused or Neglected Child--Exposure to Domestic Violence

Counsel: [***1] Susan A. DeNatale, Mastic, N.Y., for appellant.

Christine Malafi, County Attorney, Central Islip, N.Y. (Samantha N. McEachim of counsel), for respondent.

Robert C. Mitchell, Central Islip, N.Y. (Diane B. Groom of counsel), attorney for the child.

Judges: Concur--PETER B. SKELOS, J.P., JOSEPH COVELLO, RUTH C. BALKIN and LEONARD B. AUSTIN, JJ. SKELOS, J.P., COVELLO, BALKIN and AUSTIN, JJ., concur.

Opinion

[*1025] [**567] In a child protective proceeding pursuant to Family Court Act article 10, the father appeals (1) from a decision of the Family Court, Suffolk

County (Whelan, J.), dated August 3, 2010, and (2), as limited by his brief, from so much of an order of fact-finding and disposition of the same court dated August 19, 2010, as, upon the decision, made after fact-finding and dispositional hearings, found that he neglected the subject child.

Ordered that the appeal from the decision dated August 3, 2010, is dismissed, without costs or disbursements, as no appeal lies from a decision (*see Schicchi v J.A. Green Constr. Corp.*, 100 AD2d 509, 472 NYS2d 718 [1984]); and it is further,

Ordered that the order of fact-finding and disposition is affirmed insofar as appealed from, without costs or disbursements.

To establish neglect pursuant [***2] to section 1012 (f) (i) (B) of the Family Court Act, the petitioner must prove, by a preponderance of the evidence, that (1) the child's physical, mental, or emotional condition has been impaired, or is in imminent danger of becoming impaired, and (2) the actual or threatened harm to the child is due to the failure of the parent or caretaker to exercise a minimum degree of care in providing the child with [*1026] proper supervision or guardianship (*see Nicholson v Scoppetta*, 3 NY3d 357, 368, 820 NE2d 840, 787 NYS2d 196 [2004]; *see also Matter of Afton C. [James C.]*, 17 NY3d 1, 926 NYS2d 365, 950 NE2d 101, 2011 NY Slip Op 3674). A minimum degree of care is the care that a reasonable and prudent parent would provide under the [**568] circumstances (*see Nicholson v Scoppetta*, 3 NY3d at 370).

While domestic violence may be a permissible basis upon which to make a finding of [****2] neglect, "[n]ot every child exposed to domestic violence is at risk of impairment" (*id.* at 375). A finding of neglect is proper where a preponderance of the evidence establishes that the child's physical, mental, or emotional condition was impaired or was in danger of becoming impaired by the

85 A.D.3d 1025, *1026; 926 N.Y.S.2d 566, **568; 2011 N.Y. App. Div. LEXIS 5407, ***2; 2011 NY Slip Op 5492, ****2

parent's commission of an act, or acts, of domestic violence in the child's presence (see *Matter of Elijah J. [Phillip J.]*, 77 AD3d 835, 909 NYS2d 375 [2010]; [***3] *Matter of Briana F. [Oswaldo F.]*, 69 AD3d 718, 892 NYS2d 526 [2010]; *Matter of Jordan E.*, 57 AD3d 539, 869 NYS2d 162 [2008]; *Matter of Andrew Y.*, 44 AD3d 1063, 844 NYS2d 408 [2007]; *Matter of Jayda D.-B.*, 33 AD3d 998, 822 NYS2d 723 [2006]).

Here, a preponderance of the evidence established that the father neglected the subject child by engaging in an act of domestic violence against the mother in the child's presence that created an imminent danger of impairing the child's physical, mental, or emotional condition (see *Family Ct Act § 1012 [f] [i] [B]*; *Matter of Elijah J. [Phillip J.]*, 77 AD3d 835, 909 NYS2d 375 [2010]; *Matter of Briana F. [Oswaldo F.]*, 69 AD3d 718, 892 NYS2d 526 [2010]; *Matter of Jordan E.*, 57 AD3d 539, 869 NYS2d 162 [2008]; *Matter of Andrew Y.*, 44 AD3d 1063, 844 NYS2d 408 [2007]; *Matter of Jayda D.-B.*, 33 AD3d 998, 822 NYS2d 723 [2006]; cf. *Nicholson v Scoppetta*, 3 NY3d 357, 820 NE2d 840, 787 NYS2d 196 [2004]). The evidence established that the father slapped the mother while the mother was holding the child, who was only a few weeks old, in her arms, thereby creating an imminent risk of impairing the child's physical, mental, or emotional condition. Moreover, additional evidence established a pattern of domestic violence and intimidation perpetrated by the father.

Accordingly, the Family Court properly found that the child's physical, mental, or emotional condition was in imminent danger of becoming [***4] impaired as a result of the father's failure to exercise a minimum degree of care (see *Family Ct Act § 1012 [f] [i] [B]*). Skelos, J.P., Covello, Balkin and Austin, JJ., concur.

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Neutral

As of: October 23, 2017 1:46 PM Z

In re Jubilee S.

Supreme Court of New York, Appellate Division, Second Department

April 19, 2017, Decided

2016-08642 (Docket Nos. N-8320-15, N-08321-15, N-08322-15)

Reporter

149 A.D.3d 965 *; 52 N.Y.S.3d 439 **; 2017 N.Y. App. Div. LEXIS 2943 ***; 2017 NY Slip Op 03006 ****; 2017 WL 1393855

[****1] In the Matter of Jubilee S. (Anonymous). Administration for Children's Services, appellant; James S. (Anonymous), respondent-respondent, et al., respondent. (Proceeding No. 1); In the Matter of Jamee S. (Anonymous). Administration for Children's Services, appellant; James S. (Anonymous), respondent-respondent, et al., respondent. (Proceeding No. 2); In the Matter of James S. (Anonymous). Administration for Children's Services, appellant; James S. (Anonymous), respondent-respondent, et al., respondent. (Proceeding No. 3)

neglect of the children by perpetrating acts of domestic violence against the mother in their presence, *Family Ct Act § 1046(a)(i), (vi)*; a negative inference was properly drawn from the father's failure to testify.

Outcome

Order reversed; petitions reinstated; finding of neglect entered; and matter remitted with instructions.

LexisNexis® Headnotes

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THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE PUBLICATION IN THE OFFICIAL REPORTS.

Prior History: *Matter of Jubilee S. (James S. Sr.)*, 53 Misc. 3d 635, 35 N.Y.S.3d 645, 2016 N.Y. Misc. LEXIS 2716 (2016)

Core Terms

neglect, impaired, domestic violence, petitions

Case Summary

Overview

HOLDINGS: [1]-A preponderance of the evidence established that the father neglected the children because the father perpetrated acts of domestic violence against the mother in the children's presence, *Family Ct Act § 1012(f)(i)(B)*, and one child's statement was corroborated by, inter alia, proof of the father's prior

Civil Procedure > Appeals > Standards of Review

Family Law > Family Protection & Welfare > Children > Abuse, Endangerment & Neglect

Evidence > Burdens of Proof > Preponderance of Evidence

Family Law > Family Protection & Welfare > Children > Proceedings

HN1[📌] Appeals, Standards of Review

To establish neglect pursuant to *Family Ct Act § 1012(f)(i)(B)*, the petitioner must prove, by a preponderance of the evidence, that: (1) the child's physical, mental, or emotional condition has been impaired, or is in imminent danger of becoming impaired; and (2) the actual or threatened harm to the child is due to the failure of the parent or caretaker to exercise a minimum degree of care in providing the child with proper supervision or guardianship. A minimum degree of care is the care that a reasonable and prudent parent would provide under the circumstances. Although domestic violence may be a

149 A.D.3d 965, *965; 52 N.Y.S.3d 439, **439; 2017 N.Y. App. Div. LEXIS 2943, ***2943; 2017 NY Slip Op 03006, ****1

permissible basis upon which to make a finding of neglect, not every child exposed to domestic violence is at risk of impairment. A finding of neglect is proper where a preponderance of the evidence establishes that the child's physical, mental, or emotional condition was impaired or was in danger of becoming impaired by the parent's commission of an act, or acts, of domestic violence in the child's presence. While the credibility findings of a hearing court are accorded deference, an appellate court is free to make its own credibility assessments and, where proper, make a finding of neglect based upon the record before the appellate court.

Counsel: [***1] Zachary W. Carter, Corporation Counsel, New York, NY (Fay Ng and Susan Paulson of counsel), for appellant.

Seymour W. James, Jr., New York, NY (Tamara A. Steckler and Claire V. Merkin of counsel), attorney for the children.

Judges: MARK C. DILLON, J.P., JOHN M. LEVENTHAL, ROBERT J. MILLER, VALERIE BRATHWAITE NELSON, JJ. DILLON, J.P., LEVENTHAL, MILLER and BRATHWAITE NELSON, JJ., concur.

Opinion

[**440] [*966] DECISION & ORDER

Appeal by the petitioner from an order of the Family Court, Kings County (Ann E. O'Shea, J.), dated July 19, 2016. The order, after a fact-finding hearing, and upon a finding that the petitioner failed to establish that the father neglected the subject children, dismissed the neglect petitions insofar as asserted against the father.

ORDERED that the order is reversed, on the law and the facts, without costs or disbursements, the petitions are reinstated insofar as asserted against the father, a finding is made that the father neglected the subject children, and the matter is remitted to the Family Court, Kings County, for a dispositional hearing and dispositions thereafter.

The petitioner commenced these child protective proceedings alleging that the father neglected the subject children by perpetrating [***2] acts of domestic violence against the mother in their [****2] presence. A fact-finding hearing was held. The father did not appear

at the hearing or present any evidence. At the hearing, Jasmine Frye, a child protective specialist employed by the petitioner, testified that one of the subject children told Frye that "[the father] hits [the mother] all over her body and [the mother] cries. She tries to fight back and hit [the father] back. [The child] says that she is crying and her siblings . . . are scared. They usually run to the back bedroom and hide because they're fearful of the abuse." Among other evidence the petitioner submitted at the hearing was an order of fact-finding of the Family Court, Kings County (Amanda E. White, J.), dated October 21, 2011, finding that the father neglected the subject children by engaging in a continued course of physical and verbal abuse against the mother in the presence of the children.

After the hearing, the Family Court dismissed the petitions. The Family Court concluded, inter alia, that the child's out-of-court statement was not sufficiently corroborated pursuant to *Family Court Act § 1046(a)(vi)*, and that, in any event, there was insufficient evidence to establish that the children's [***3] physical, mental, or emotional [**441] condition had been impaired, or was in imminent danger of becoming impaired. The petitioner appeals.

HN1 [†] "To establish neglect pursuant to *section 1012(f)(i)(B) of the Family Court Act*, the petitioner must prove, by a preponderance of the evidence, that (1) the child's physical, mental, or emotional condition has been impaired, or is in imminent danger of becoming impaired, and (2) the actual or threatened harm to the child is due to the failure of the parent or caretaker [†967] to exercise a minimum degree of care in providing the child with proper supervision or guardianship" (*Matter of Kiara C. [David C.]*, 85 AD3d 1025, 1025-1026, 926 N.Y.S.2d 566; see *Nicholson v Scoppetta*, 3 NY3d 357, 368, 820 N.E.2d 840, 787 N.Y.S.2d 196). "A minimum degree of care is the care that a reasonable and prudent parent would provide under the circumstances" (*Matter of Kiara C. [David C.]*, 85 AD3d at 1026). Although domestic violence may be a permissible basis upon which to make a finding of neglect, "[n]ot every child exposed to domestic violence is at risk of impairment" (*Nicholson v Scoppetta*, 3 NY3d at 375). "A finding of neglect is proper where a preponderance of the evidence establishes that the child's physical, mental, or emotional condition was impaired or was in danger of becoming impaired by the parent's commission of an act, or acts, of domestic violence in the child's presence" (*Matter of Kiara C. [David C.]*, 85 AD3d at 1026; see *Matter of Elijah J. [Phillip J.]*, 77 AD3d 835, 909 N.Y.S.2d 375). "While the

149 A.D.3d 965, *967; 52 N.Y.S.3d 439, **441; 2017 N.Y. App. Div. LEXIS 2943, ***3; 2017 NY Slip Op 03006, ****2

credibility findings of a hearing court are [***4] accorded deference, we are free to make our own credibility assessments and, where proper, make a finding of neglect based upon the record before us" (*Matter of Chanyae S. [Rena W.]*, 82 AD3d 1247, 1247, 924 N.Y.S.2d 793 [citations omitted]).

DILLON, J.P., LEVENTHAL, MILLER and BRATHWAITE NELSON, JJ., concur.

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A preponderance of the evidence established that the father neglected the subject children by perpetrating acts of domestic violence against the mother in their presence (see *Matter of Nah-Ki B. [Nakia B.]*, 143 AD3d 703, 707, 38 N.Y.S.3d 593; *Matter of Mohammed J. [Mohammed Z.]*, 121 AD3d 994, 995, 995 N.Y.S.2d 126). Contrary to the Family Court's determination, the child's out-of-court statement was sufficiently corroborated. *Family Court Act § 1046(a)(vi)* provides, in part, that "previous statements made by the child relating to any allegations of abuse or neglect shall be admissible in evidence, but if uncorroborated, such statements shall not be sufficient to make a fact-finding of abuse or neglect. Any other evidence tending to support the reliability of the previous statements, including, but not limited to the types of evidence defined in this subdivision shall be sufficient corroboration." *Family Court Act § 1046(a)(i)* provides, in part, that "proof of the abuse or neglect of one child shall be admissible evidence on the issue of the abuse or neglect of any other child of . . . the respondent." The child's statement was corroborated by, among other evidence, proof of the father's prior neglect of the [***5] children by perpetrating acts of domestic violence against the mother in their presence (see *Family Ct Act § 1046(a)(i)*, [vi]; *Matter of Sha-Naya M.S.C. [Derrick C.]*, 130 AD3d 719, 721, 13 N.Y.S.3d 502; *Matter of Melody H. [Dwayne H.]*, 121 AD3d 686, 687, 993 N.Y.S.2d 340; *Matter of Leah R. [Miguel R.]*, 104 AD3d 774, 961 N.Y.S.2d 249; *Matter of Astrid C.*, 43 AD3d 819, 821, 841 N.Y.S.2d 356). [*968] Additionally, contrary to the court's further determination, the evidence was sufficient to establish that the father's acts of domestic violence [**442] against the mother in the children's presence impaired, or created an imminent danger of impairing, the children's physical, mental, or emotional condition (see *Matter of Nah-Ki B. [Nakia B.]*, 143 AD3d at 707). Moreover, a negative inference is properly drawn from the father's failure to testify (see *id.* at 706).

Accordingly, the Family Court improperly dismissed the petitions, and the order [****3] appealed from must be reversed, the petitions reinstated, a finding of neglect entered, and the matter remitted to the Family Court, Kings County, for a dispositional hearing and dispositions thereafter.

DOMESTIC VIOLENCE AND CHILD WELFARE



How domestic violence impacts children

Family Court Article 10

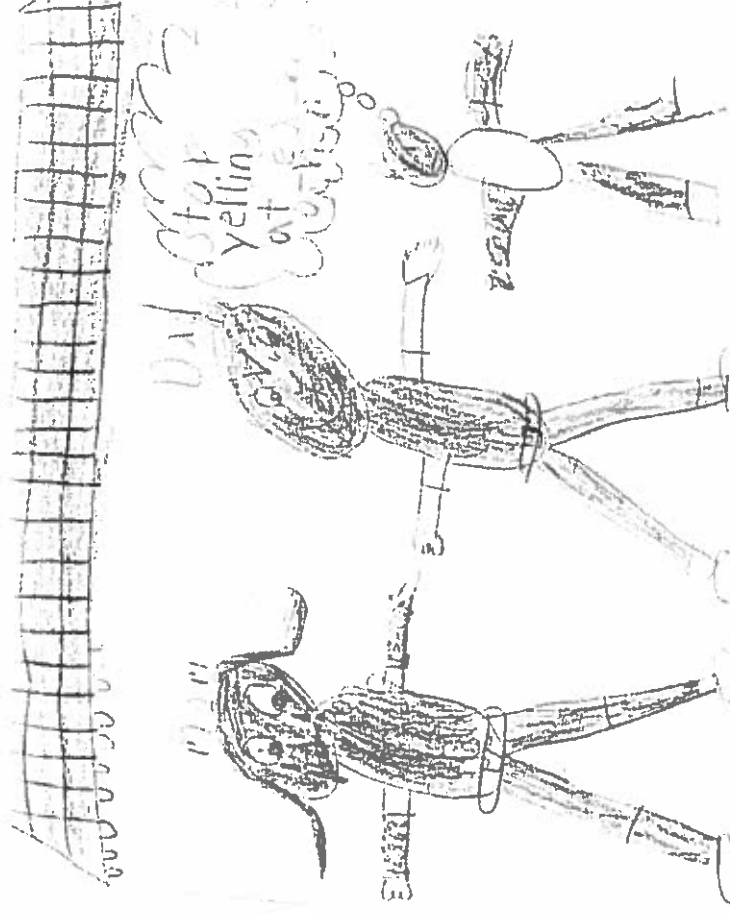
Nicholson v. Scopetta

Perpetrator v. Victim

ACES

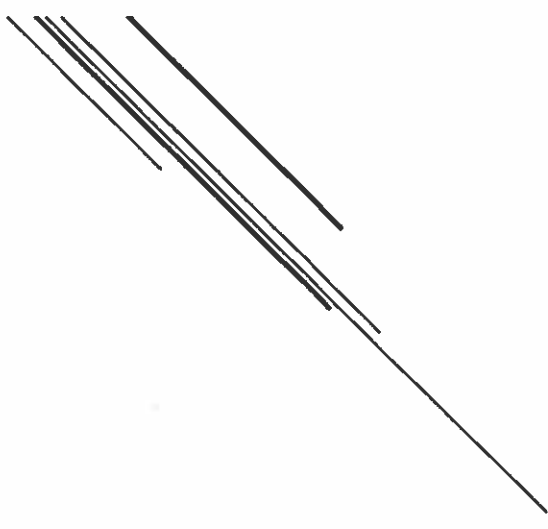
Where do we go from here?

OVERVIEW



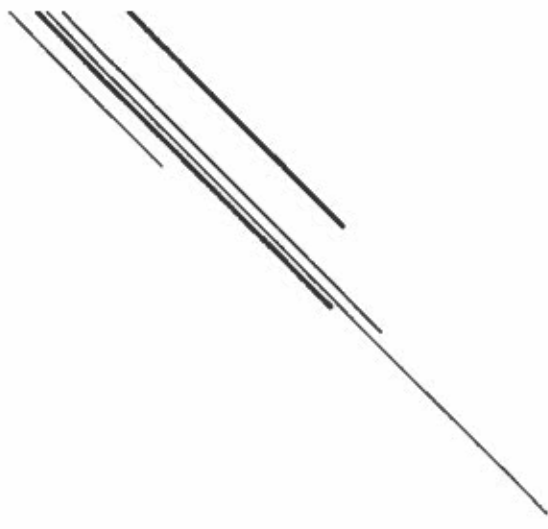
- ▶ Domestic Violence affects children of all ages across all socio-economic groups. Domestic violence potentially places children at risk of harm, not only physically, but mentally and emotionally as well.

DOMESTIC VIOLENCE IS BAD FOR KIDS



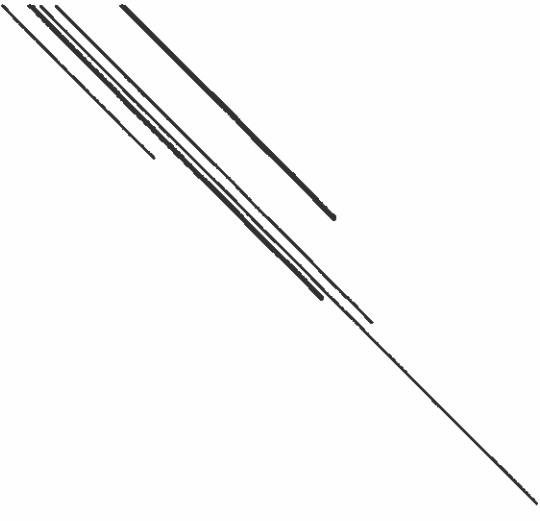


THE CHILD WAS "NOT IN THE ROOM"



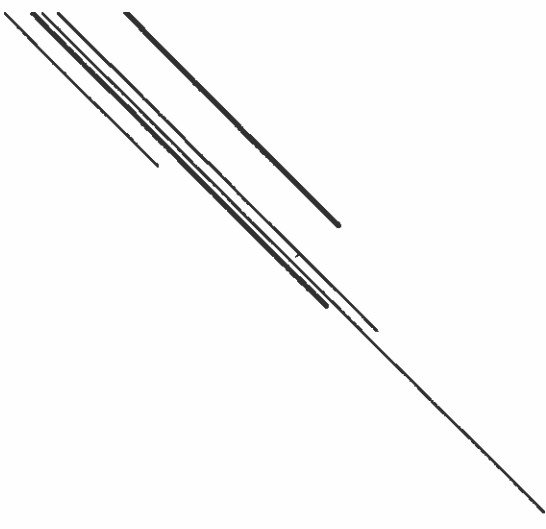
- ▶ Mental health professionals have known for at least two decades that children who witness DV suffer from a variety of problems as a result of their exposure to violence in the home.
- ▶ Children witnessing DV may experience post-traumatic stress reactions.
- ▶ They may develop serious adjustment and behavioral problems.
- ▶ Other impacts may include serious mental health consequences, cognitive difficulties such as poor academic accomplishments, lower intelligence quotients, as well as poor language skills, deficient memory, lack of inhibition, and inattention.
- ▶ These problems can persist into adolescence and adulthood.

DV AND CHILD DEVELOPMENT



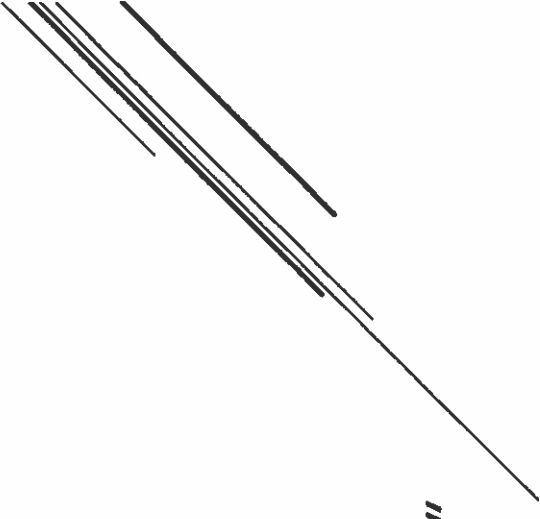
- ▶ CPS will investigate complaints made to its Central Registry from mandated reporters such as police officers responding to a domestic incidence, teachers and social workers as well as any other interested party.

WHEN DOES CPS GET INVOLVED?



- ▶ Family Court Act 1012(f) defines a neglected child:
- ▶ Child is less than 18 whose
- ▶ Physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired because
- ▶ A parent or person legally responsible for a child's care failed to exercise a minimum degree of care ...
- ▶ In providing the child with proper supervision or guardianship

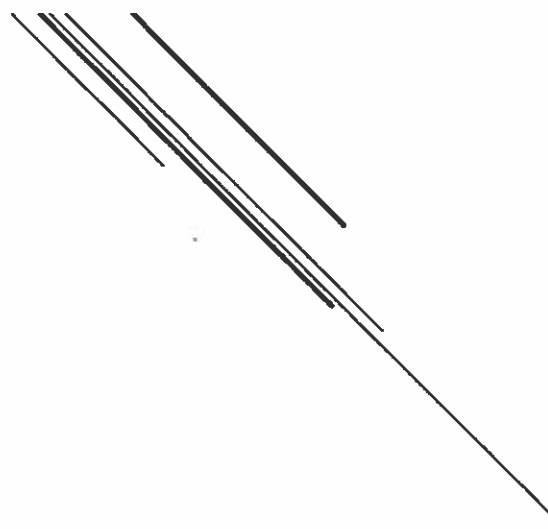
DEFINITION OF A "NEGLECTED CHILD"



- ▶ includes a state of substantially diminished psychological or intellectual functioning in relation to, but not limited to, such factors as **failure to thrive, control of aggressive or self-destructive impulses, ability to think and reason, or acting out or misbehavior**, including incorrigibility, ungovernability or habitual truancy; provided, however, that such impairment must be clearly attributable to the unwillingness or inability of the respondent to exercise a minimum degree of care toward the child.

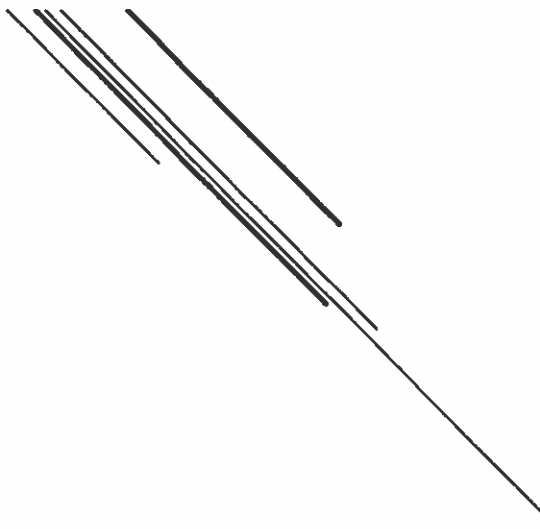
Family Court Act § 1012 (h)

DEFINITION OF “IMPAIRMENT OF EMOTIONAL
HEALTH” AND “IMPAIRMENT OF MENTAL OR
EMOTIONAL CONDITION”

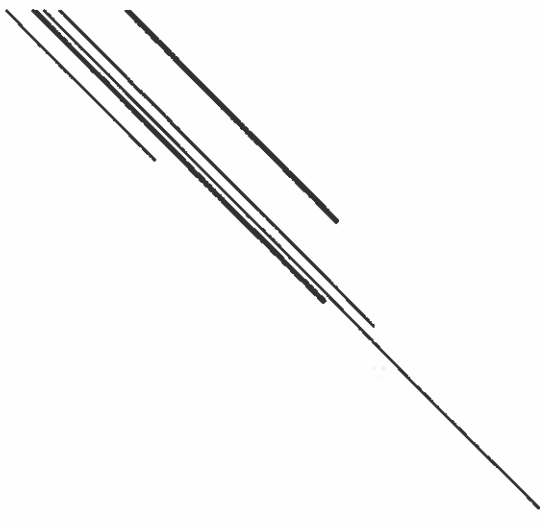


- ▶ But does this mean parents who expose their Children to DV neglect their children?

NOT NECESSARILY



- ▶ Seminal case *Nicholson v. Scoppetta*
- ▶ “...exposing a child to domestic violence is not presumptively neglectful. Not every child exposed to domestic violence is at risk of impairment.”



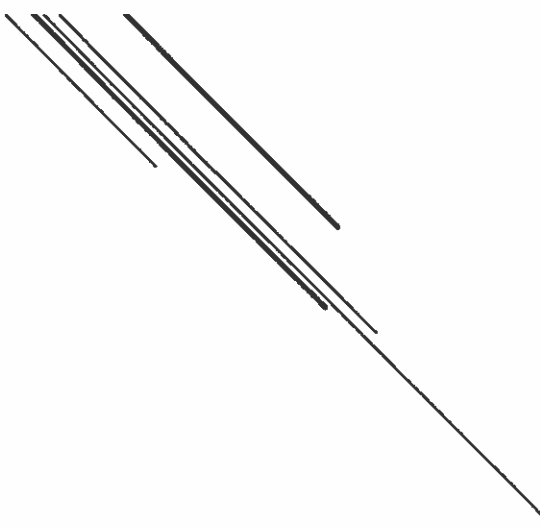
- ▶ Exposure to domestic violence is a proper basis for a neglect finding where the violence occurred in the child's presence and resulted in physical, mental or emotional impairment or imminent danger thereof (see *Matter of Gianna A.* (Jashua A.), 132 A.D.3d 855, 856, 18 N.Y.S.3d 658 (2d Dept.2015); *Matter of Christy C.* (Jeffrey C.), 74 A.D.3d 561, 562, 903 N.Y.S.2d 365 (1st Dept.2010)).

In re Emily S., 146 AD3d 599, 600 (1st Dept. 2017)

PERPETRATOR

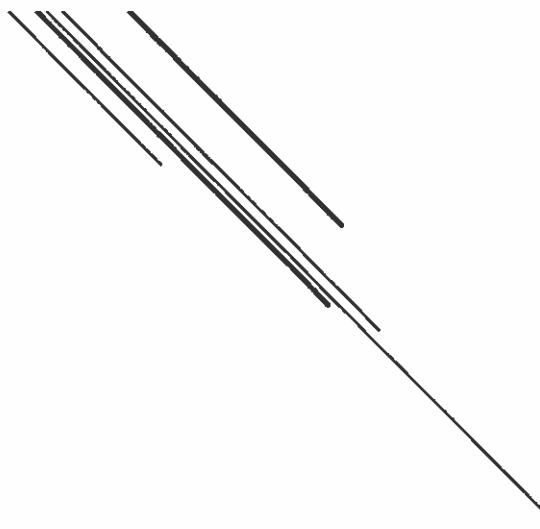
- ▶ The harder question: When is it appropriate to charge a victim of domestic violence with child neglect?
- ▶ The Court of Appeals addressed this issue in *Nicholson v. Scoppetta*.

VICTIM AS A RESPONDENT IN CHILD NEGLECT MATTERS



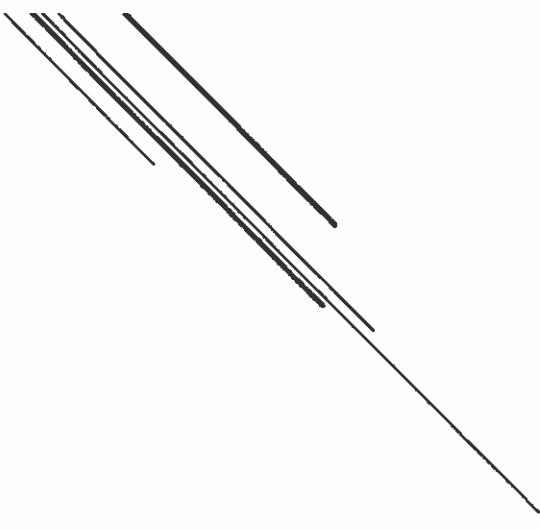
New York City Administration for Children's Services was routinely charging mothers with child neglect and seeking removal of those children from their mother's care where the mothers were otherwise not unfit, but rather victims of domestic violence. In a resulting federal class action, the United States Court of Appeals certified certain questions to the New York State Court of Appeals.

Nicholson v. Scoppetta, 3 NY3d 357 (2004)



- ▶ “Does the definition of a ‘neglected child’ under N.Y. Family ct. Act 1012(f), (h) include instances in which the sole allegation of neglect is that the parent or other person legally responsible for the child’s care allows the child to witness domestic violence against the caretaker?”

QUESTION POSED TO COURT OF APPEALS

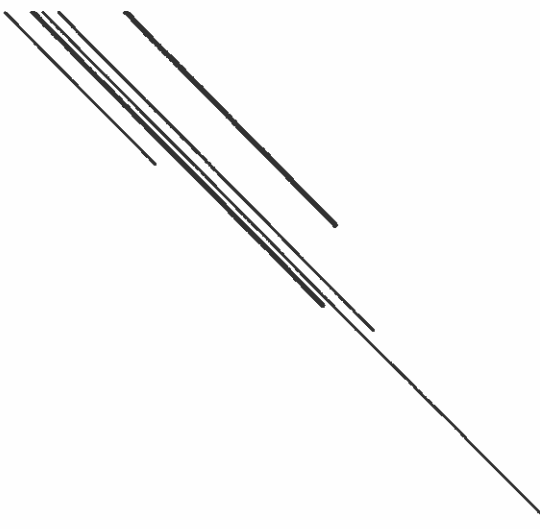


- ▶ It depends.
- ▶ No neglect where the “sole allegation” is that the mother has been abused and the child has witnessed the abuse.
- ▶ BUT
- ▶ “Conceivably” a court may find neglect in certain cases:
 - ▶ where the children witnessed repeated abuse and were afraid of the perpetrator yet the mother lacked awareness of the impact of the DV and allowed him to return to the house several times.
 - ▶ Where the children were exposed to regular and continuous extremely violent conduct and where there was police involvement and the children told the caseworkers they were frightened and distressed.

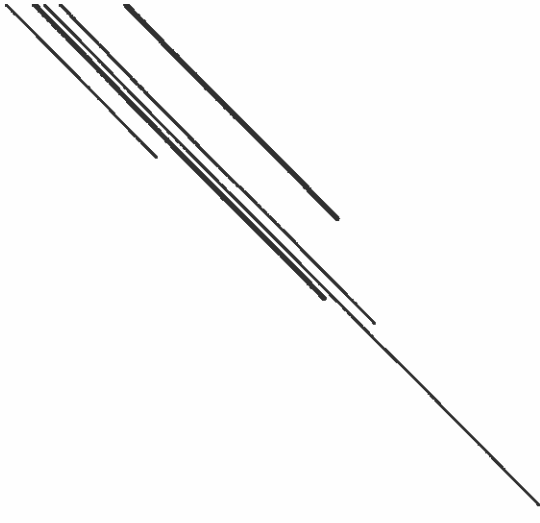
ANSWER

► “The battered mother is charged with neglect not because she is a victim of domestic violence or because her children witnessed the abuse, but rather because a preponderance of evidence establishes that the children were actually or imminently harmed by her failure to exercise even minimal care in providing them with proper oversight.”

► *Nicholson v. Scoppetta*, 3 NY3d 357 (2004)



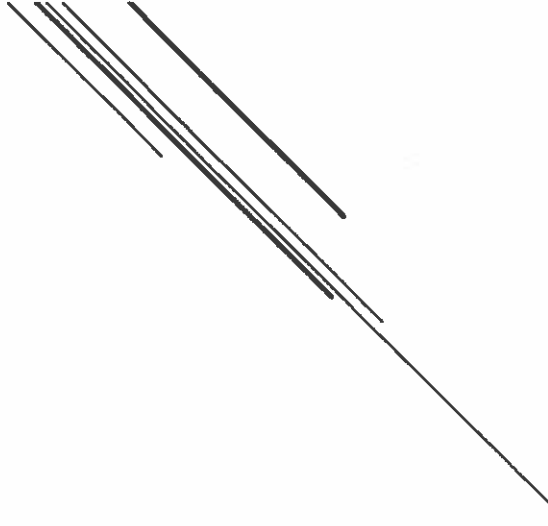
- ▶ Since *Nicholson v Scoppetta*, numerous courts have addressed the issue of whether parents have neglected their children because of domestic violence in the home.



- ▶ The court properly found that both the stepfather and moth neglected the child who was exposed to domestic violence. The mother testified that her relationship with the stepfather had been characterized by a pattern of domestic violence, and that the stepfather had engaged in acts of physical abuse against her on several occasions in the child's presence. A caseworker testified that the child told her that he had witnessed the stepfather engage in domestic violence against the mother on multiple occasions, and that he was scared by these incidents and afraid for the mother. The child's therapist also testified that the child had made such statements to her and had exhibited symptoms of trauma and fear in discussing the stepfather's presence in the home.
- ▶ As for the mother, the court held that the evidence that she had continued to reside with the stepfather despite the recurring pattern of his violence against her in the child's presence and without regard for the impact of the violence on the child, and had even rejected shelter and domestic violence services made available to her, established that she had neglected the child by failing to exercise a minimum degree of care in preventing him from being mentally or emotionally harmed

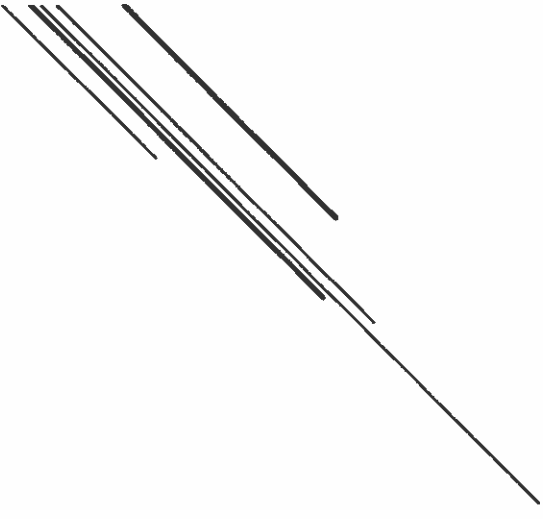
▶ *In re David M.*, 119 AD3d 800 (2d Dept. 2014)

▶

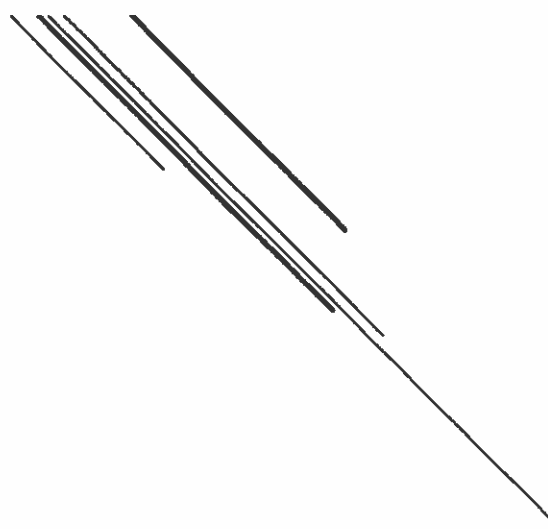


- ▶ The Family Court properly determined that the petitioner failed to establish by a preponderance of the evidence that the father neglected the children by perpetrating acts of domestic violence against the mother in their presence. Contrary to the petitioner's contention, evidence that the children witnessed an **isolated incident** of domestic violence was insufficient to establish that the physical, mental, or emotional condition of the children had been impaired or was in danger of becoming impaired

In re Cameron D., 2017 NY Slip Op 07252 (2d Dept Oct. 18, 2017)



- ▶ The court can infer impairment or imminent danger of impairment to the children's physical, mental or emotional condition from the father's conduct
- ▶ A single act of domestic violence in the presence of a child or within the hearing of the child may be sufficient for a neglect finding.
- ▶ *Matter of Jihad H.*, 151 AD3d 1063 (2d Dept. 2017)

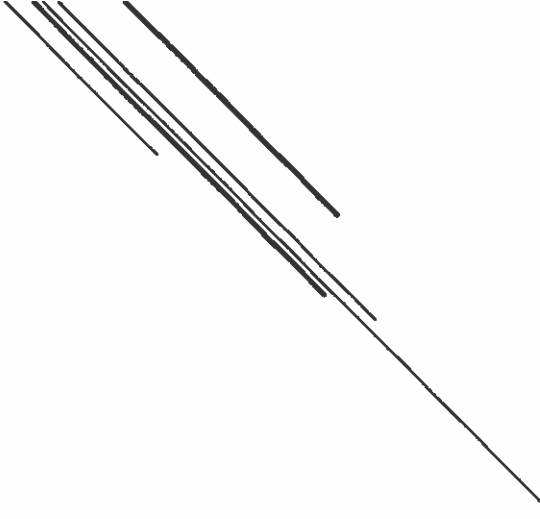


- ▶ The court properly found that the father neglected the subject child by engaging in an act of domestic violence against the mother in the child's presence. The evidence established that the father slapped the mother while the mother was holding the child, who was only a few weeks old, in her arms, thereby creating an imminent risk of impairing the child's physical, mental, or emotional condition. Moreover, additional evidence established a pattern of domestic violence and intimidation perpetrated by the father.

- ▶ *In re Kiara.*, 85 AD3d 1025 (2d Dept. 2011)

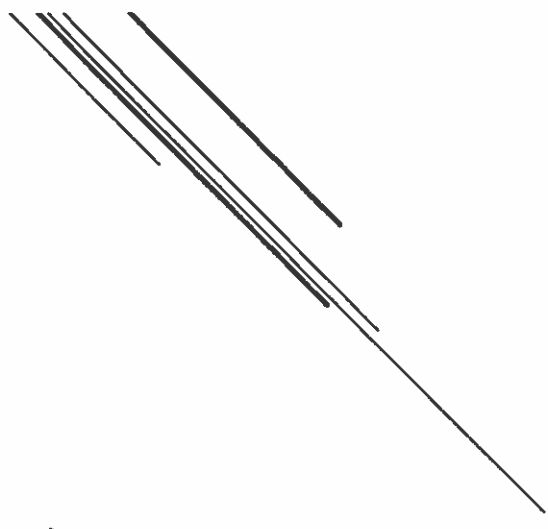
- ▶

RISK OF PHYSICAL IMPAIRMENT ONLY?



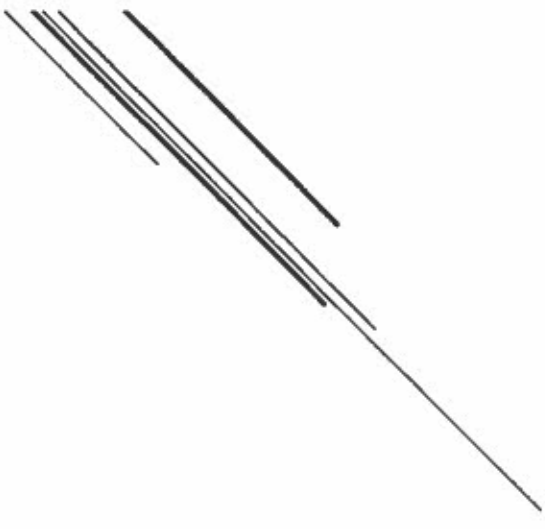
- ▶ Adverse Childhood Experiences or “ACEs” - Center for Disease Control conducted a large retrospective study to examine links between traumatic childhood experiences (including DV) and adult health and well being.
- ▶ Found a cogent relationship between ACEs and health risk factors, mental health, and substance abuse conditions.
- ▶ For participants who reported witnessing their mother’s abuse there was a substantial increase during adolescence for alcohol use, drug use and depression (“Practice Perspectives” by Rita Webb citing S.R. Dube)
- ▶ It has been shown that the brains of children who have witnessed domestic violence are different than other children. This includes children who are in another room or on the stairs, listening to the domestic violence. Also a study has shown that the same is true for babies who were thought to be sleeping during the violent episodes.

NEUROBIOLOGY OF THE BRAIN



- ▶ Education
- ▶ Treatment
- ▶ Intervention

WHERE DO WE GO FROM HERE?



Hon. James A. McDonaugh

The Hon. James A. McDonaugh is an Acting County Court Judge and currently presides over the Domestic Violence Part in Suffolk County. He was elected to the District Court in 2012. Prior to being elected to the District Court, he served as the Associate Village Justice in Lindenhurst. Prior to ascending to the bench Judge McDonaugh was a partner in the firm of Phillips, Weiner, Artura, Cox & McDonaugh, where he focused on commercial litigation, personal injury and criminal defense matters. Judge McDonaugh started his legal career as an Assistant District Attorney in Suffolk County, where he served in the District Court, East End, Case Advisory and Narcotics Bureaus.

Judge McDonaugh is a graduate of SUNY Oneonta and the University of Memphis Law School.

Judge McDonaugh is a member of the Ancient Order of Hibernian and Knights of Columbus. He has in the past volunteered for Autism Speaks, the Lymphoma and Leukemia Society and the Lindenhurst Little League.

Judge McDonaugh also holds memberships in the Suffolk County Bar Association, Suffolk County Criminal Bar Association, and Suffolk County Brehon Law Society, where he served as past president.

Enter "UNK" if data is not available. Do not hold order to collect this information

FAMILY PROTECTION REGISTRY
INFORMATION SHEET

(8-2017)

***** ASTERISKED AREAS ARE REQUIRED *****

** Court ORI No: NY0 _____ J ** Name of Court: _____
** Order No: 20 _____ ** County: _____
** Docket/Index No: _____ Court Contact Name _____ Tel: _____
** Issuance Date on Order: _____ ** Expiration Date: _____
** Law Enforcement Agency (Where copy of Order is Filed): _____ Police ORI: NY

****SERVICE OF ORDER:**

☐ Police to Serve Order ☐ Other (later service) ☐ Order served in Court Date _____
☐ Notification by Mail Mail date: _____ (Family orders only) ☐ Order Previously Served Date: _____ no new service needed

APPLYING/PROTECTED PARTY (Party Requesting Order)

**Name: (First) _____ (M) _____ (Last) _____ (Suffix) _____
**DOB: _____ **Sex: ☐ M ☐ F ☐ Unk ☐ Child ☐ Unborn Child ☐ No First Name Height: _____ Eye Color: _____
**Race: ☐ White ☐ Black ☐ Other ☐ Unk ☐ Amer. Indian/Alaskan Native ☐ Asian/Pacific Island Weight: _____ Hair Color: _____
** Ethnicity: ☐ Hispanic ☐ Non-Hispanic Lic Plate # _____ State: _____ Drivers ID: _____ State: _____
Mother's Maiden Name: _____ Soc. Sec. No.: _____ NYSID: _____
Alias or Nickname: (First) _____ (M) _____ (Last) _____ (Suffix) _____
**Address Information: ** **Confidential? ☐ Yes ☐ No Type (ie Home, Work) _____
(Street) _____ (Apt) _____ (Floor) _____ (Room) _____
(City) _____ (State) _____ (Zip) _____ Mail c/o: _____ (County) _____ (Nation) _____
Contact Information: **Confidential? ☐ Yes ☐ No ☐ Outside USA
Phone (home): _____ (work): _____ (other): _____ email: _____ fax: _____
Against Party Relationship to Protected Party
☐ Spouse ☐ Ex-Spouse ☐ Father ☐ Mother ☐ Parent ☐ Intimate-Live Together
☐ Unk ☐ Intimate-Civil Union ☐ Intimate-Reg Domestic Partner ☐ Step-Parent
☐ Other
☐ Intimate-Dated Formerly ☐ Intimate-Dating
☐ Intimate-Other
If so, have the parties ever lived together?
☐ Yes ☐ No

Additional Protected Parties:

(Please use one of the above relationships)

Name: _____ DOB: _____ Sex: M F Relationship to Against _____
Name: _____ DOB: _____ Sex: M F Relationship to Against _____
Name: _____ DOB: _____ Sex: M F Relationship to Against _____

If any above has an intimate-dating/former dating/other rel. with the against party, have they ever lived together? ☐ Yes ☐ No

ENJOINED/AGAINST PARTY (Party Against Whom Order Runs)

**Name: (First) _____ (M) _____ (Last) _____ (Suffix) _____
**Date of Birth: _____ **Sex: ☐ Male ☐ Female ☐ Unk Height: _____ Eye Color: _____
**Race: ☐ White ☐ Black ☐ Other ☐ Unk ☐ Amer. Indian/Alaskan Native ☐ Asian/Pacific Island Weight: _____ Hair Color: _____
** Ethnicity: ☐ Hispanic ☐ Non-Hispanic Lic Plate # _____ State: _____ Drivers ID: _____ State: _____
Mother's Maiden Name: _____ Soc. Sec. No.: _____ NYSID: _____
Alias or Nickname: (First) _____ (M) _____ (Last) _____ (Suffix) _____
**Address Information: ** **Confidential? ☐ Yes ☐ No Type (ie Home, Work) _____
(Street) _____ (Apt) _____ (Floor) _____ (Room) _____
(City) _____ (State) _____ (Zip) _____ Mail c/o: _____ (County) _____ (Nation) _____
Contact Information: **Confidential? ☐ Yes ☐ No ☐ Outside USA
Phone (home): _____ (work): _____ (other): _____ email: _____ fax: _____

Is Police Caution Advised? If yes, why: _____

Order No: _____

NYSID #: _____

CJTN #: _____

ORDER OF PROTECTION
FAMILY OFFENSES CPL§530.12

Present: Honorable _____

PEOPLE OF THE STATE OF NEW YORKPart ☐ Youthful Offender (check if applicable)
DOCKET No. _____

Charges _____

(Check box) ☐ Ex PARTE ☐ DEFENDANT PRESENT IN COURT

VS

DEFENDANT NAME

DATE OF BIRTH

NOTICE: YOUR FAILURE TO OBEY THIS ORDER MAY SUBJECT YOU TO MANDATORY ARREST AND CRIMINAL PROSECUTION, WHICH MAY RESULT IN YOUR INCARCERATION FOR UP TO SEVEN YEARS FOR CONTEMPT OF COURT. IF THIS IS A TEMPORARY ORDER OF PROTECTION AND YOU FAIL TO APPEAR IN COURT WHEN YOU ARE REQUIRED TO DO SO, THIS ORDER MAY BE EXTENDED IN YOUR ABSENCE AND THEN CONTINUE IN EFFECT UNTIL A NEW DATE SET BY THE COURT.

THIS ORDER OF PROTECTION WILL REMAIN IN EFFECT EVEN IF THE PROTECTED PARTY HAS, OR CONSENTS TO HAVE, CONTACT OR COMMUNICATION WITH THE PARTY AGAINST WHOM THE ORDER IS ISSUED. THIS ORDER OF PROTECTION CAN ONLY BE MODIFIED OR TERMINATED BY THE COURT. THE PROTECTED PARTY CANNOT BE HELD TO VIOLATE THIS ORDER NOR BE ARRESTED FOR VIOLATING THIS ORDER.

☐ TEMPORARY ORDER OF PROTECTION. Whereas good cause has been shown for the issuance of a temporary order of protection [as a condition of ☐ recognizance ☐ release on bail ☐ adjournment in contemplation of dismissal]

☐ ORDER OF PROTECTION. Whereas defendant has been convicted of [specify crime or violation]: _____

And the Court having made a determination in accordance with §530.12 of the Criminal Procedure Law,

IT IS HEREBY ORDERED that the above-named defendant observe the following conditions of behavior: [check applicable paragraphs and subparagraphs]

(01) ☐ Stay away from (A) ☐ [name(s) of protected persons or witness(es)] _____ and/or from the

(B) ☐ home of _____, (C) ☐ school of _____

(D) ☐ business of _____, (E) ☐ place of employment of _____

(F) ☐ other [specify] _____

☐ except for contact, communication or access permitted by a valid order issued by a family or supreme court in a custody, visitation or child abuse or neglect proceeding.

(14) ☐ Refrain from communication or any other contact by mail, telephone, e-mail, voice mail or other electronic or any other means with [specify protected person(s)]: _____

☐ except for contact, communication or access permitted by a valid order issued by a family or supreme court in a custody, visitation or child abuse or neglect proceeding.

(02) ☒ Refrain from assault, stalking, harassment, aggravated harassment, menacing, reckless endangerment, strangulation, criminal obstruction of breathing or circulation, disorderly conduct, criminal mischief, sexual abuse, sexual misconduct, forcible touching, intimidation, threats, identity theft, grand larceny, coercion or any criminal offense against [specify protected person(s), members of such person's family or household, or person(s) with custody of child(ren)]: _____

(15) ☐ Refrain from intentionally injuring or killing without justification the following companion animal(s) (pet(s)) [specify type(s) and, if available, name(s)]: _____

(16) ☐ Permit [specify individual] _____ to enter the residence at [specify] _____ during [specify date/time]: _____ with Suffolk Police or Sheriffs to remove personal belongings not in issue in litigation [specify items]: _____

(04) ☒ Refrain from [indicate acts] all acts of violence and threats of violence that create an unreasonable risk to the health, safety or welfare of [specify child(ren), family or household member(s)]: _____

(05) ☐ Permit [specify individual(s)]: _____ entitled by a court order or separation or other written agreement, to visit with [specify child(ren)] _____ during the following periods of time [specify] _____ under the following terms and conditions [specify] _____

(12) ☒ Surrender any and all handguns, pistols, revolvers, rifles, shotguns and other firearms owned or possessed, including, but not limited to, the following: all firearms, weapons and do not obtain any further guns or other firearms. Such surrender shall take place immediately, but in no event later than [specify date/time]: Immediately at the Nearest Police Precinct or to the Police Officer or Deputy Sheriff serving this order.

(1) ☐ Promptly return or transfer the following identification documents [specify]: _____ to the party protected by this Order NOT LATER THAN [specify date]: One time only in the following manner [specify manner or mode of return or transfer] _____

CHECK BOX(ES) ☐ Such documents shall be made available for use as evidence in this judicial proceeding.

IF APPLICABLE ☐ [Identify owned documents or documents in both parties' names only]; the following document(s) may be used as necessary for legitimate use by the defendant [specify] _____

(09) ☐ Specify other conditions defendant must observe for the purposes of protection: Defendant may not purchase or consume alcohol and/or illegal drugs, and/or possess and/or be under the influence in the presence of the protected party

☐ GPS monitoring ordered as per attached document:

IT IS FURTHER ORDERED that the above-named Defendant's license to carry, possess, repair, sell or otherwise dispose of a firearm or firearms, if any, pursuant to Penal Law§400.00, is hereby (13A) ☐ suspended or (13B) ☐ revoked (final order only) and/or (13C) ☒ the Defendant shall remain ineligible to receive a firearm license during the period of this order (Check all applicable boxes).

IT IS FURTHER ORDERED that this order of protection shall remain in force until and including [specify date]: _____ BUT IF YOU FAIL TO APPEAR IN COURT ON THIS DATE THE ORDER MAY BE EXTENDED AND CONTINUE IN EFFECT UNTIL A NEW DATE SET BY THE COURT

Dated: _____

☐ Defendant advised in Court of issuance and contents of Order.

☐ Order personally served on Defendant in Court

☐ Order served by other means [specify]: _____

☐ Warrant issued for Defendant

☐ ADDITIONAL SERVICE INFORMATION [specify] _____

The Criminal Procedure Law provides that presentation of a copy of this order of protection to any police officer or peace officer acting pursuant to his or her special duties shall authorize, and in some situations may require, such officer to arrest a defendant who is alleged to have violated its terms and to bring him or her before the Court to face penalties authorized by law. Federal law requires that this order must be honored and enforced by state and tribal courts, including courts of a state, the District of Columbia, a commonwealth, territory or possession of the United States. If the person against whom the order is sought is an intimate partner of the protected party and has been or will be afforded reasonable notice and opportunity to be heard in accordance with state law sufficient to protect that person's rights (18 U.S.C. §522b5, 2260) it is a federal crime to:

• cross state lines to violate this or to stalk, harass or commit domestic violence against an intimate partner or family member;
• buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition while this order remains in effect (Note: there is a limited exception for military or law enforcement officers but only while they are on duty); and
• buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition after a conviction of domestic violence-related crime involving the use or attempted use of physical force or a deadly weapon against an intimate partner or family member, even after this Order has expired (18 U.S.C. §5822(a)(8), 822(g)(9), 2261, 2261A, 2262)

OFFENSES FOR WHICH A ONE (1) YEAR ADJOURNMENT IN CONTEMPLATION OF DISMISSAL IS PERMITTED PURSUANT TO CPL 170.55 AND CPL 530.11

PL 110/120 et seq. (ALL SUBDIVISIONS)	ATTEMPTED ASSAULT (ANY)
PL 120.00	ASSAULT 3 RD DEGREE
PL 120.05	ASSAULT 2 ND DEGREE
PL 120.14	MENACING 2 ND DEGREE
PL 120.15	MENACING 3 RD DEGREE
PL 120.20, 120.25	RECKLESS ENDANGERMENT (ALL DEG.)
PL 120.45	STALKING 4 TH DEGREE
PL 120.50	STALKING 3 RD DEGREE
PL 120.55	STALKING 2 ND DEGREE
PL 120.60	STALKING 1 ST DEGREE
PL 121.11	CRIMINAL OBSTRUCTION OF BREATHING
PL 121.12	STRANGULATION 2 ND DEGREE
PL 121.13	STRANGULATION 1 ST DEGREE
PL 130.20	SEXUAL MISCONDUCT
PL 130.52	FORCIBLE TOUCHING
PL 130.55	SEXUAL ABUSE 3 RD DEGREE
PL 130.60	SEXUAL ABUSE 2 ND DEGREE
PL 145.00, 145.05, 145.10, 145.12	CRIMINAL MISCHIEF (ALL DEGREES)
PL 240.20 (All Subdivisions)	DISORDERLY CONDUCT
PL 240.25	HARASSMENT IN THE 1 ST DEGREE
PL 240.26	HARASSMENT IN THE 2 ND DEGREE
PL 240.30	AGGRAVATED HARASSMENT 2 ND DEGREE

APPLIES TO INCIDENTS:

"between spouses or former spouses, or between parent and child or between members of the same family or household"

For purposes of this section, "members of the same family or household" with respect to a proceeding in the criminal courts shall mean the following: (a) persons related by consanguinity or affinity; (b) persons legally married to one another; (c) persons formerly married to one another regardless of whether they still reside in the same household; (d) persons who have a child in common, regardless of whether such persons have been married or have lived together at any time; and (e) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship".

HON. ANDREW A. CRECCA

Andrew A. Crecca is the Supervising Judge of the Matrimonial Parts in the Tenth Judicial District, Suffolk County, New York. In addition to his duties as Supervising Judge, he is the presiding Justice of Suffolk County's Integrated Domestic Violence Court, and has served in that position since January of 2007. He was first elected to the bench in 2004 as a County Court Judge and presided over felony criminal cases in a dedicated trial part. In January of 2007 he was appointed an Acting Justice of the Supreme Court. In 2010 he was elected Justice of the New York State Supreme Court for the 10th Judicial District.

Prior to his time on the bench Justice Crecca served as a County Legislator, and maintained a private law practice concentrating in matrimonial and family law. He also served as an Assistant District Attorney in the New York County District Attorney's office from 1989 to 1994. He received his undergraduate degree from Marist College in 1986, and his law degree from St. John's University School of Law in 1989.

Justice Crecca has lectured throughout the United States and internationally on domestic violence issues, problem solving courts, matrimonial and family law, criminal law, as well as on court operations. He serves as a faculty member to the *National Judicial Institute on Domestic Violence*, the *New York State Judicial Institute*, the *National Council of Juvenile and Family Court Judges*, the *Suffolk Academy of Law*, and as an Adjunct Professor at *Touro Law School*. He has also held the position of Adjunct Assistant Professor of Political Science at *Hofstra University*.

As an active member of the *Suffolk County Bar Association*, Justice Crecca serves as Co-Chair of its Law Student Committee and has previously served on its Board of Directors and as chair of the Bench Bar Committee. In 2011 Justice Crecca was appointed and continues to serve as a member of the Chief Administrative Judge's *Matrimonial Practice Advisory & Rules Committee* for New York State. He also serves on the Advisory Board of *The Center for Children, Families and the Law at Hofstra University School of Law*, and on the Executive Committee of the Family Law Section of the *New York State Bar Association*.

Justice Crecca is also a member of the *National Council of Juvenile & Family Court Judges*, the *New York State Association of Supreme Court Justices*, the *New York State Bar Association*, the *Suffolk County Bar Association*, and the *Suffolk County Matrimonial Bar Association*.

Justice Crecca lives on Long Island with his wife Donna and their two sons.

Orders of Protection in Matrimonial Cases

Both DRL §240 and §252 have provisions concerning issuance of Orders of Protection in matrimonial cases.

DRL §240 concerns, generally and specifically, the issue of custody and child support in matrimonial actions and under DRL §240(3) the issuance of orders or protection that may be necessary as a condition of any order made concerning custody & child support [see below applicable provisions].

DRL §252 similarly provides for the issuance of Orders of Protection or TOP in any supreme court actions for divorce, separation, annulment or in an action to declare the nullity of a void marriage. Such initial applications or modifications can be entertained in both the supreme and family courts. [see statutes attached].

Under both sections, the available information indicates that application for OP or TOP must be in writing in the form of an Order to Show Cause or Notice of Motion (see DRL § 252(4)(8)). *Ex parte* relief is available with an Order to Show Cause. The Court rule (22 NYCRR 202.7[f]) which governs notice on applications for temporary relief, specifically provides that the rule does not apply to Orders to Show Cause or motions requesting an Order of Protection under DRL § 240—unless otherwise ordered by the Court. DRL §252 does not provide standards for determining whether an OP should be granted; therefore the substantive law to be applied is from Article 8 FCA.

Statutes Concerning Orders of Protection in Matrimonial Actions

DRL §240

1. (a) In any action or proceeding brought (1) to annul a marriage or to declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, or (4) to obtain, by a writ of habeas corpus or by petition and order to show cause, the custody of or right to visitation with any child of a marriage, the court shall require verification of the status of any child of the marriage with respect to such child's custody and support, including any prior orders, and shall enter orders for custody and support as, in the court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties and to the best interests of the child and subject to the provisions of subdivision one-c of this section. Where either party to an action concerning custody of or a right to visitation with a child alleges in a sworn petition or complaint or sworn answer, cross-petition, counterclaim or other sworn responsive pleading that the other party has committed an act of domestic violence against the party making the allegation or a family or household member of either party, as such family or household member is defined in article eight of the family court act, and such allegations are proven by a preponderance of the evidence, the court must consider the effect of such domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant in making a direction pursuant to this section and state on the record how such findings, facts and circumstances factored into

the direction. If a parent makes a good faith allegation based on a reasonable belief supported by facts that the child is the victim of child abuse, child neglect, or the effects of domestic violence, and if that parent acts lawfully and in good faith in response to that reasonable belief to protect the child or seek treatment for the child, then that parent shall not be deprived of custody, visitation or contact with the child, or restricted in custody, visitation or contact, based solely on that belief or the reasonable actions taken based on that belief. If an allegation that a child is abused is supported by a preponderance of the evidence, then the court shall consider such evidence of abuse in determining the visitation arrangement that is in the best interest of the child, and the court shall not place a child in the custody of a parent who presents a substantial risk of harm to that child, and shall state on the record how such findings were factored into the determination. An order directing the payment of child support shall contain the social security numbers of the named parties. In all cases there shall be no prima facie right to the custody of the child in either parent. Such direction shall make provision for child support out of the property of either or both parents. The court shall make its award for child support pursuant to subdivision one-b of this section. Such direction may provide for reasonable visitation rights to the maternal and/or paternal grandparents of any child of the parties. Such direction as it applies to rights of visitation with a child remanded or placed in the care of a person, official, agency or institution pursuant to article ten of the family court act, or pursuant to an instrument approved under section three hundred fifty-eight-a of the social services law, shall be enforceable pursuant to part eight of article ten of the family court act and sections three hundred fifty-eight-a and three hundred eighty-four-a of the social services law and other applicable provisions of law against any person having care and custody, or temporary care and custody, of the child. Notwithstanding any other provision of law, any written application or motion to the court for the establishment, modification or enforcement of a child support obligation for persons not in receipt of public assistance and care must contain either a request for child support enforcement services which would authorize the collection of the support obligation by the immediate issuance of an income execution for support enforcement as provided for by this chapter, completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section fifty-two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative fee may be required. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of any such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; the name and date of birth of the child or children; and the name and address of the employers and income payors of the party from whom child support is sought or from the party ordered to pay child support to the other party. Such direction may require the payment of a sum or sums of money either directly to the custodial parent or to third persons for goods or services furnished for such child, or for both payments to the custodial parent and to such third persons; provided, however, that unless the party seeking or receiving child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred eleven-h of the social services law. Every order directing the payment of support shall require that if either parent currently, or at any time in the future, has health insurance benefits available that may be extended or obtained to cover the child, such parent is required to exercise the option of additional coverage in favor of such child and execute and deliver to such person any forms, notices, documents or instruments necessary to assure timely payment of any health insurance claims for such child.

(a-1)(1) **Permanent and initial temporary orders of custody or visitation.** Prior to the issuance of any permanent or initial temporary order of custody or visitation, the court shall conduct a review of the decisions and reports listed in subparagraph three of this paragraph.

(2) **Successive temporary orders of custody or visitation.** Prior to the issuance of any successive temporary order of custody or visitation, the court shall conduct a review of the decisions and reports listed in subparagraph three of this paragraph, unless such a review has been conducted within ninety days prior to the issuance of such order.

(3) **Decisions and reports for review.** The court shall conduct a review of the following:

- (i) related decisions in court proceedings initiated pursuant to article ten of the family court act, and all warrants issued under the family court act; and
- (ii) reports of the statewide computerized registry of orders of protection established and maintained pursuant to section two hundred twenty-one-a of the executive law, and reports of the sex offender registry established and maintained pursuant to section one hundred sixty-eight-b of the correction law.

(4) **Notifying counsel and issuing orders.** Upon consideration of decisions pursuant to article ten of the family court act, and registry reports and notifying counsel involved in the proceeding, or in the event of a self-represented party, notifying such party of the results thereof, including any court appointed attorney for children, the court may issue a temporary, successive temporary or final order of custody or visitation.

(5) **Temporary emergency order.** Notwithstanding any other provision of the law, upon emergency situations, including computer malfunctions, to serve the best interest of the child, the court may issue a temporary emergency order for custody or visitation in the event that it is not possible to timely review decisions and reports on registries as required pursuant to subparagraph three of this paragraph.

(6) **After issuing a temporary emergency order.** After issuing a temporary emergency order of custody or visitation, the court shall conduct reviews of the decisions and reports on registries as required pursuant to subparagraph three of this paragraph within twenty-four hours of the issuance of such temporary emergency order. Should such twenty-four hour period fall on a day when court is not in session, then the required reviews shall take place the next day the court is in session. Upon reviewing decisions and reports the court shall notify associated counsel, self-represented parties and attorneys for children pursuant to subparagraph four of this paragraph and may issue temporary or permanent custody or visitation orders.

§ 252. Effect of pendency of action for divorce, separation or annulment on petition for order of protection

1. In an action for divorce, separation or annulment or in an action to declare the nullity of a void marriage in the Supreme Court, the Supreme Court or the family court shall entertain an application for an order of protection or temporary order of protection by either party. Such an order may require any party:

- (a) to stay away from the home, school, business or place of employment of the child, other parent or any other party, and to stay away from any other specific location designated by the court;

- (b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;
- (c) to refrain from committing a family offense, as defined in subdivision one of section 530.11 of the criminal procedure law, or any criminal offense against such child or against the other parent or against any person to whom custody of the child is awarded or from harassing, intimidating or threatening such persons;
- (d) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in a proceeding or action under this chapter or the family court act;
- (e) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child;
- (f) to pay the reasonable counsel fees and disbursements involved in obtaining or enforcing the order of the person who is protected by such order if such order is issued or enforced; or
- (g) to refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the person protected by the order or a minor child residing in such person's household. "Companion animal," as used in this section, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law.
- (h) to observe such other conditions as are necessary to further the purposes of protection.

DRL § 252 (4) No order of protection may direct any party to observe conditions of behavior unless: (i) the party requesting the order of protection has served and filed an action, proceeding, counterclaim or written motion and, (ii) the court has made a finding on the record that such party is entitled to issuance of the order of protection which may result from a judicial finding of fact, judicial acceptance of an admission by the party against whom the order was issued or judicial finding that the party against whom the order is issued has given knowing, intelligent and voluntary consent to its issuance. The provisions of this subdivision shall not preclude the court from issuing a temporary order of protection upon the court's own motion or where a motion for such relief is made to the court, for good cause shown.

DRL § 252 (8) Any party moving for a temporary order of protection pursuant to this subdivision during hours when the court is open shall be entitled to file such motion or pleading containing such prayer for emergency relief on the same day that such person first appears at such court, and a hearing on the motion or portion of the pleading requesting such emergency relief shall be held on the same day or the next day that the court is in session following the filing of such motion or pleading.

§ 812. Procedures for family offense proceedings

1. Jurisdiction. The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision one of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, criminal obstruction of breathing or blood circulation, strangulation in the second degree, strangulation in the first degree, assault in the second degree, assault in the third degree or an attempted assault, criminal obstruction of breathing or blood circulation or strangulation between spouses or former spouses, or between parent and child or

between members of the same family or household except that if the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law, then the family court shall have exclusive jurisdiction over such proceeding. Notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section. In any proceeding pursuant to this article, a court shall not deny an order of protection, or dismiss a petition, solely on the basis that the acts or events alleged are not relatively contemporaneous with the date of the petition, the conclusion of the fact-finding or the conclusion of the dispositional hearing. For purposes of this article, "disorderly conduct" includes disorderly conduct not in a public place. For purposes of this article, "members of the same family or household" shall mean the following:

- (a) persons related by consanguinity or affinity;
- (b) persons legally married to one another;
- (c) persons formerly married to one another regardless of whether they still reside in the same household;
- (d) persons who have a child in common regardless of whether such persons have been married or have lived together at any time; and
- (e) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship".

2. Information to petitioner or complainant. The chief administrator of the courts shall designate the appropriate persons, including, but not limited to district attorneys, criminal and family court clerks, corporation counsels, county attorneys, victims assistance unit staff, probation officers, warrant officers, sheriffs, police officers or any other law enforcement officials, to inform any petitioner or complainant bringing a proceeding under this article, before such proceeding is commenced, of the procedures available for the institution of family offense proceedings, including but not limited to the following:

- (a) That there is concurrent jurisdiction with respect to family offenses in both family court and the criminal courts;
- (b) That a family court proceeding is a civil proceeding and is for the purpose of attempting to stop the violence, end the family disruption and obtain protection. Referrals for counseling, or counseling services, are available through probation for this purpose;
- (c) That a proceeding in the criminal courts is for the purpose of prosecution of the offender and can result in a criminal conviction of the offender;
- (d) That a proceeding or action subject to the provisions of this section is initiated at the time of the filing of an accusatory instrument or family court petition, not at the time of arrest, or request

for arrest, if any;

(e) Repealed.

(f) That an arrest may precede the commencement of a family court or a criminal court proceeding, but an arrest is not a requirement for commencing either proceeding; provided, however, that the arrest of an alleged offender shall be made under the circumstances described in subdivision four of section 140.10 of the criminal procedure law;

(g) That notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section.

3. Official responsibility. No official or other person designated pursuant to subdivision two of this section shall discourage or prevent any person who wishes to file a petition or sign a complaint from having access to any court for that purpose.

4. Official forms. The chief administrator of the courts shall prescribe an appropriate form to implement subdivision two of this section.

5. Notice. Every police officer, peace officer or district attorney investigating a family offense under this article shall advise the victim of the availability of a shelter or other services in the community, and shall immediately give the victim written notice of the legal rights and remedies available to a victim of a family offense under the relevant provisions of the criminal procedure law, the family court act and the domestic relations law. Such notice shall be available in English and Spanish and, if necessary, shall be delivered orally and shall include but not be limited to the following statement:

"If you are the victim of domestic violence, you may request that the officer assist in providing for your safety and that of your children, including providing information on how to obtain a temporary order of protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you, or assist in making arrangement to take you, and your children to a safe place within such officer's jurisdiction, including but not limited to a domestic violence program, a family member's or a friend's residence, or a similar place of safety. When the officer's jurisdiction is more than a single county, you may ask the officer to take you or make arrangements to take you and your children to a place of safety in the county where the incident occurred. If you or your children are in need of medical treatment, you have the right to request that the officer assist you in obtaining such medical treatment. You may request a copy of any incident reports at no cost from the law enforcement agency. You have the right to seek legal counsel of your own choosing and if you proceed in family court and if it is determined that you cannot afford an attorney, one must be appointed to represent you without cost to you.

You may ask the district attorney or a law enforcement officer to file a criminal complaint. You also have the right to file a petition in the family court when a family offense has been committed against you. You have the right to have your petition and request for an order of protection filed on the same day you appear in court, and such request must be heard that same day or the next day court is in session. Either court may issue an order of protection from conduct constituting a family offense which could include, among other provisions, an order for

the respondent or defendant to stay away from you and your children. The family court may also order the payment of temporary child support and award temporary custody of your children. If the family court is not in session, you may seek immediate assistance from the criminal court in obtaining an order of protection.

The forms you need to obtain an order of protection are available from the family court and the local criminal court (the addresses and telephone numbers shall be listed). The resources available in this community for information relating to domestic violence, treatment of injuries, and places of safety and shelters can be accessed by calling the following 800 numbers (the statewide English and Spanish language 800 numbers shall be listed and space shall be provided for local domestic violence hotline telephone numbers).

Filing a criminal complaint or a family court petition containing allegations that are knowingly false is a crime.”

The division of criminal justice services in consultation with the state office for the prevention of domestic violence shall prepare the form of such written notice consistent with the provisions of this section and distribute copies thereof to the appropriate law enforcement officials pursuant to subdivision nine of section eight hundred forty-one of the executive law. Additionally, copies of such notice shall be provided to the chief administrator of the courts to be distributed to victims of family offenses through the family court at such time as such persons first come before the court and to the state department of health for distribution to all hospitals defined under article twenty-eight of the public health law. No cause of action for damages shall arise in favor of any person by reason of any failure to comply with the provisions of this subdivision except upon a showing of gross negligence or willful misconduct.

§ 828. Temporary order of protection; temporary order for child support

1. (a) Upon the filing of a petition or counter-claim under this article, the court for good cause shown may issue a temporary order of protection, which may contain any of the provisions authorized on the making of an order of protection under section eight hundred forty-two, provided that the court shall make a determination, and the court shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this subdivision, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the temporary order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons.

(b) Upon the filing of a petition under this article, or as soon thereafter as the petitioner appears before the court, the court shall advise the petitioner of the right to proceed in both the family and criminal courts, pursuant to the provisions of section one hundred fifteen of this act.

2. A temporary order of protection is not a finding of wrongdoing.

3. The court may issue or extend a temporary order of protection *ex parte* or on notice simultaneously with the issuance of a warrant, directing that the respondent be arrested and brought before the court, pursuant to section eight hundred twenty-seven of this article.

4. Notwithstanding the provisions of section eight hundred seventeen of this article the court may,

together with a temporary order of protection issued pursuant to this section, issue an order for temporary child support, in an amount sufficient to meet the needs of the child, without a showing of immediate or emergency need. The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of the respondent may be unavailable. Where such information is available, the court may make an award for temporary child support pursuant to the formula set forth in subdivision one of section four hundred thirteen of this act. An order making such award shall be deemed to have been issued pursuant to article four of this act. Upon making an order for temporary child support pursuant to this subdivision, the court shall advise the petitioner of the availability of child support enforcement services by the support collection unit of the local department of social services, to enforce the temporary order and to assist in securing continued child support, and shall set the support matter down for further proceedings in accordance with article four of this act.

Where the court determines that the respondent has employer-provided medical insurance, the court may further direct, as part of an order of temporary support under this subdivision, that a medical support execution be issued and served upon the respondent's employer as provided for in section fifty-two hundred forty-one of the civil practice law and rules.

§ 842. Order of protection

An order of protection under section eight hundred forty-one of this part shall set forth reasonable conditions of behavior to be observed for a period not in excess of two years by the petitioner or respondent or for a period not in excess of five years upon (i) a finding by the court on the record of the existence of aggravating circumstances as defined in paragraph (vii) of subdivision (a) of section eight hundred twenty-seven of this article; or (ii) a finding by the court on the record that the conduct alleged in the petition is in violation of a valid order of protection. Any finding of aggravating circumstances pursuant to this section shall be stated on the record and upon the order of protection. The court may also, upon motion, extend the order of protection for a reasonable period of time upon a showing of good cause or consent of the parties. The fact that abuse has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order. The court must articulate a basis for its decision on the record. The duration of any temporary order shall not by itself be a factor in determining the length or issuance of any final order. Any order of protection issued pursuant to this section shall specify if an order of probation is in effect. Any order of protection issued pursuant to this section may require the petitioner or the respondent:

- (a) to stay away from the home, school, business or place of employment of any other party, the other spouse, the other parent, or the child, and to stay away from any other specific location designated by the court, provided that the court shall make a determination, and shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this subdivision, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons;
- (b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;
- (c) to refrain from committing a family offense, as defined in subdivision one of section eight

hundred twelve of this act, or any criminal offense against the child or against the other parent or against any person to whom custody of the child is awarded, or from harassing, intimidating or threatening such persons;

(d) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in this proceeding or in any other proceeding or action under this act or the domestic relations law;

(e) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child;

(f) to pay the reasonable counsel fees and disbursements involved in obtaining or enforcing the order of the person who is protected by such order if such order is issued or enforced;

(g) to require the respondent to participate in a batterer's education program designed to help end violent behavior, which may include referral to drug and alcohol counseling, and to pay the costs thereof if the person has the means to do so, provided however that nothing contained herein shall be deemed to require payment of the costs of any such program by the petitioner, the state or any political subdivision thereof; and

(h) to provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the order.

(i) 1. to refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the petitioner or a minor child residing in the household.

2. "Companion animal", as used in this section, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law.

(j) to observe such other conditions as are necessary to further the purposes of protection.

The court may also award custody of the child, during the term of the order of protection to either parent, or to an appropriate relative within the second degree. Nothing in this section gives the court power to place or board out any child or to commit a child to an institution or agency.

Notwithstanding the provisions of section eight hundred seventeen of this article, where a temporary order of child support has not already been issued, the court may in addition to the issuance of an order of protection pursuant to this section, issue an order for temporary child support in an amount sufficient to meet the needs of the child, without a showing of immediate or emergency need. The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of the respondent may be unavailable. Where such information is available, the court may make an award for temporary child support pursuant to the formula set forth in subdivision one of section four hundred thirteen of this act. Temporary orders of support issued pursuant to this article shall be deemed to have been issued pursuant to section four hundred thirteen of this act.

Upon making an order for temporary child support pursuant to this subdivision, the court shall advise the petitioner of the availability of child support enforcement services by the support collection unit of the local department of social services, to enforce the temporary order and to assist in securing

continued child support, and shall set the support matter down for further proceedings in accordance with article four of this act.

Where the court determines that the respondent has employer-provided medical insurance, the court may further direct, as part of an order of temporary support under this subdivision, that a medical support execution be issued and served upon the respondent's employer as provided for in section fifty-two hundred forty-one of the civil practice law and rules.

In any proceeding in which an order of protection or temporary order of protection or a warrant has been issued under this section, the clerk of the court shall issue to the petitioner and respondent and his counsel and to any other person affected by the order a copy of the order of protection or temporary order of protection and ensure that a copy of the order of protection or temporary order of protection be transmitted to the local correctional facility where the individual is or will be detained, the state or local correctional facility where the individual is or will be imprisoned, and the supervising probation department or the department of corrections and community supervision where the individual is under probation or parole supervision.

Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section eight hundred twelve of this article.

In addition to the foregoing provisions, the court may issue an order, pursuant to section two hundred twenty-seven-c of the real property law, authorizing the party for whose benefit any order of protection has been issued to terminate a lease or rental agreement pursuant to section two hundred twenty-seven-c of the real property law.

§842-a. Suspension and revocation of a license to carry, possess, repair or dispose of a firearm or firearms pursuant to section 400.00 of the penal law and ineligibility for such a license; order to surrender firearms.

1. Mandatory and permissive suspension of firearms license and ineligibility for such a license upon the issuance of a temporary order of protection. Whenever a temporary order of protection is issued pursuant to section eight hundred twenty-eight of this article:

(a) the court shall suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed where the court receives information that gives the court good cause to believe that: (i) the respondent has a prior conviction of any violent felony offense as defined in section 70.02 of the penal law; (ii) the respondent has previously been found to have willfully failed to obey a prior order of protection and such willful failure involved (A) the infliction of serious physical injury, as defined in subdivision ten of section 10.00 of the penal law, (B) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (C) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iii) the respondent has a prior conviction for stalking in the first degree as defined

in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law; and

(b) the court may where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the temporary order of protection is issued, suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed.

2. Mandatory and permissive revocation or suspension of firearms license and ineligibility for such a license upon the issuance of an order of protection. Whenever an order of protection is issued pursuant to section eight hundred forty-one of this part:

(a) the court shall revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed where the court finds that the conduct which resulted in the issuance of the order of protection involved (i) the infliction of serious physical injury, as defined in subdivision ten of section 10.00 of the penal law, (ii) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; and

(b) the court may, where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection is issued, (i) revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license and order the immediate surrender of any or all firearms owned or possessed or (ii) suspend or continue to suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed.

3. Mandatory and permissive revocation or suspension of firearms license and ineligibility for such a license upon a finding of a willful failure to obey an order of protection. Whenever a respondent has been found, pursuant to section eight hundred forty-six-a of this part to have willfully failed to obey an order of protection issued by this court or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, in addition to any other remedies available pursuant to section eight hundred forty-six-a of this part:

(a) the court shall revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed where the willful failure to obey such order involves (i) the infliction of serious physical injury, as defined in subdivision ten of section 10.00 of the penal law, (ii) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of

section 10.00 of the penal law, or (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iv) behavior constituting stalking in the first degree as defined in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law; and

(b) the court may where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection was issued, (i) revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, whether or not the respondent possesses such a license, and order the immediate surrender of any or all firearms owned or possessed or (ii) suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed.

4. Suspension. Any suspension order issued pursuant to this section shall remain in effect for the duration of the temporary order of protection or order of protection, unless modified or vacated by the court.

5. Surrender. (a) Where an order to surrender one or more firearms has been issued, the temporary order of protection or order of protection shall specify the place where such firearms shall be surrendered, shall specify a date and time by which the surrender shall be completed and, to the extent possible, shall describe such firearms to be surrendered and shall direct the authority receiving such surrendered firearms to immediately notify the court of such surrender.

(b) The prompt surrender of one or more firearms pursuant to a court order issued pursuant¹ this section shall be considered a voluntary surrender for purposes of subparagraph (f) of paragraph one of subdivision a of section 265.20 of the penal law. The disposition of any such firearms shall be in accordance with the provisions of subdivision six of section 400.05 of the penal law.

(c) The provisions of this section shall not be deemed to limit, restrict or otherwise impair the authority of the court to order and direct the surrender of any or all pistols, revolvers, rifles, shotguns or other firearms owned or possessed by a respondent pursuant to this act.

6. Notice. (a) Where an order of revocation, suspension or ineligibility has been issued pursuant to this section, any temporary order of protection or order of protection issued shall state that such firearm license has been suspended or revoked or that the respondent is ineligible for such license, as the case may be.

(b) The court revoking or suspending the license, ordering the respondent ineligible for such license, or ordering the surrender of any firearm shall immediately notify the statewide registry of orders of protection and the duly constituted police authorities of the locality of such action.

(c) The court revoking or suspending the license or ordering the defendant ineligible for such license shall give written notice thereof without unnecessary delay to the division of state police at its office in the city of Albany.

(d) Where an order of revocation, suspension, ineligibility, or surrender is modified or vacated, the court shall immediately notify the statewide registry of orders of protection and the duly constituted police authorities of the locality concerning such action and shall give written notice thereof without unnecessary delay to the division of state police at its office in the city of Albany.

7. Hearing. The respondent shall have the right to a hearing before the court regarding any revocation, suspension, ineligibility or surrender order issued pursuant to this section, provided that nothing in this subdivision shall preclude the court from issuing any such order prior to a hearing. Where the court has issued such an order prior to a hearing, it shall commence such hearing within fourteen days of the date such order was issued.

8. Nothing in this section shall delay or otherwise interfere with the issuance of a temporary order of protection.

ORDERS of PROTECTION

for Family Court Judicial Officers

A Continuing Legal Education Program accredited by
The New York State Judicial Institute
A Lunch & Learn Program

Presented by:

Hon. Andrew A. Crecca

Cohalan Court Complex

April 24, 2017

ORDERS of PROTECTION for Family Court Judicial Officers

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Learning Objectives

*As a result of this presentation
you will be better able to:*

1. Understand the law regarding civil OPs
2. Understand Victim behaviors & needs
3. Issue more effective Protection Orders
4. Identify cases that involve a greater risk of dangerousness

What is Domestic Violence?

**ABUSE
in an
INTIMATE RELATIONSHIP**

**INTIMATE
RELATIONSHIP**

A relationship in which two people, regardless of sexual orientation or gender are dating, living together, married or separated.

ABUSE

Refers to the behavior

**ABUSIVE BEHAVIOR
involves a range of behaviors**

- Physical & Sexual Abuse
- Coercion, Threats & Intimidation
- Emotional Abuse
- Isolation
- Economic Abuse
- Exerting Male Privilege
- Minimizing, Denying & Blaming
- Using the Children

***New York State definition of
Domestic Violence:***

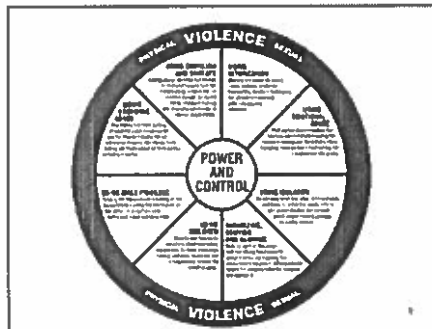
A pattern of coercive tactics, which can include physical, psychological, sexual, economic and emotional abuse, perpetrated by one person against another adult intimate partner, with the goal of establishing and maintaining power and control.

Features of Serious DV...

- Often occurs in a context where there is a pattern of controlling behaviors
- May be physical, emotional, psychological and sexual in nature *(or any combination thereof)*
- Can include threats to harm children, other family members, pets or property
- Behaviors are used to intimidate, humiliate or frighten victims, or to make them feel powerless
- May be a single act or combinations of acts which may appear minor when viewed in isolation, but collectively form a pattern of abuse

**Domestic Violence
is about...**

**POWER
&
CONTROL**



Orders of Protection

**What makes the
Civil Order of Protection
process unique?**

Unique Aspects of Civil OPs

- Allows for a quick Court response, initiated by the victim
- More flexible and specific safety protections
- Vehicle to fashion relief tailored to V needs
- Opportunity to provide economic relief
- Orders are enforceable by arrest
- Voluntary nature of civil proceedings
- Allows for the removal of firearms

Who Can Issue Orders of Protection?

- **CRIMINAL COURTS**
 - In all criminal cases pursuant to the CPL
- **SUPREME COURT**
 - in matrimonial cases pursuant to DRL
- **FAMILY COURT**
 - In family court cases under Articles 4, 6, 8 and 10 of FCA

CONCURRENT JURISDICTION

**Criminal Court & Family Court share
CONCURRENT JURISDICTION**

**Same incident / allegations may be
prosecuted in BOTH jurisdictions**

See, Malloy v. Malloy, App Div 2nd Dept

Orders of Protection in Family Court

- Child Support Proceedings
 - FCA §§ 430 & 446
- Custody Proceedings
 - FCA §§ 655 & 656
- Neglect & Abuse Proceedings
 - FCA §§ 1029 & 1056
- Family Offense Proceedings
 - FCA Article 8

Orders of Protection FCA Article 8 Family Offense Proceedings (§812)

- | | |
|--|---|
| ■ Disorderly Conduct | ■ Menacing 2 nd , 3 rd |
| ■ Harassment 1 st , 2 nd | ■ Reckless Endanger. |
| ■ Agg. Harassment | ■ Crim Obstr Breathing |
| ■ Sexual Misconduct | ■ Strangulation |
| ■ Forcible Touching | ■ Assault 3 rd , 2 nd , Attempt |
| ■ Sex Abuse 3 rd , 2 nd | ■ Identity Theft 1 st - 3 rd |
| ■ Stalking 1 st - 4 th | ■ Grand Larceny |
| ■ Criminal Mischief | ■ Coercion |

Orders of Protection FCA Article 8
Who it Covers? (5812)

- Persons related by consanguinity (blood) or affinity (marriage);
- Persons legally married to one another;
- Persons formally married to one another;
- Persons who have a child in common
- Person who are or have been in an intimate relationship (*if in issue do hearing*)

None of these people need to reside together

Orders of Protection FCA Article 8
Procedure

- Application is brought by Petition
- Petitioner has a right to counsel
- Ideally Petition should include details/history
- Service is effectuated at no cost by Sheriff
- Court will fix return date for proceeding
- Petitions are to be liberally construed
- Petition may not be dismissed because allegations are not contemporaneous

Orders of Protection FCA Article 8
The Hearing (FCA 832-838)

- Fact Finding hearing as to whether a Family Offense was committed (preponderance)
- Consider requesting an AFC be appointed
- Dispositional Hearing (*FCA 841*)
 - Dismiss Petition
 - Suspend Judgement up to 6 months
 - Place Respondent on Probation for up to 1 year
 - Mandate Respondent to participate in a BIP
 - Issue an Order of Protection
 - Direct Restitution

What Can the OP include? (FCA 842)

- Stay Away Provisions for Victim, Child, etc.
- Refrain from Acts, Threats, Communication,
- Temporary Custody, Visitation
- Permit R to remove belongings
- Pay Counsel Fees to obtain or enforce order
(continued on next slide)

What Can the OP include? (FCA 842)

- Order R to Participate in BIP
- To pay medical costs for injuries caused
- To Protect a family pet
- To return id documents, credit cards, etc.
- Order R to Pay Temporary CS, Medical Ins.,
Temp. Spousal Support *(continued on next slide)*

What Can the OP include? (FCA 842)

- All Should Include Removal of Firearms
- Prohibit the purchasing or possessing of FA
- Suspension /Revocation of FA License
- Surrender of FA should be monitored by the
Court

Duration of the Orders



- Final OP can be for up to two years
- Up to five years if court makes finding of any "aggravating circumstances" on record
 - Physical or Serious Physical Injury occurred
 - Use of a dangerous instrument
 - History of violations of prior OPs
 - Prior criminal convictions where P Was V
 - A finding that the conduct violated an OP
 - A find by the Court that R presents as an ongoing danger to the P or a family member

Enforcement of OP



- **Civil Enforcement**
 - Violation Petition in Family Court
 - Contempt Application in Supreme Court
- **Criminal Enforcement by Arrest**

11

Red Flags in DV Cases



- Substance Abuse
- Criminal History
- Recent Separation
- Jealousy
- Access to Firearms
- History of Stalking
- Attempted Strangulation
- Threats to kill self, partner or children
- Minor in home who is not bio child of Perp
- History of assault during pregnancy

**Understanding
Victim Behavior**

**WHY VICTIMS
DO WHAT THEY DO**

3A



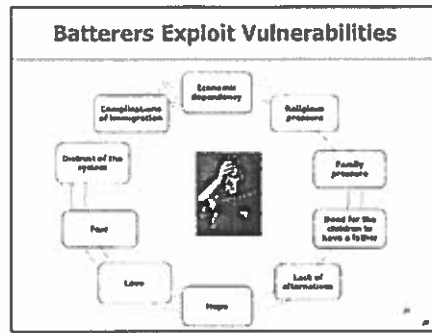
Questions

**Why is Helen Hunt
taking her abuser back?**

**Why is Kevin Spacey so angry with Helen
Hunt? Is this an effective intervention?**

**Are there other people like Kevin Spacey
that you encounter in your work?**

3A



- ### Responses To Women Who Return
- Belittle
 - Minimize Violence
 - Coerce with Court Orders
 - Allege She Made False Allegations
 - Blame Her for the Violence
 - Initiate "Failure to Protect" Case
 - Withdraw Support

- ### Decision-Making Factors of Abused Adults
- Cultural and Religious Beliefs
 - Risks v. Benefits of Compliance or Resistance
 - Limited Options or Resources (legal, \$, social)
 - Need of Time to Reflect & Make a Plan
 - Self Sobriety Issues
 - Support / Love / Hope

LEAVING IS A PROCESS...

- Difficult to Know Where Victim is in Her Process at Time of Contact with Intervener
- Anger from Friend or Court Is Likely to Foreclose Further Communication
- Most Battered Mothers are trying to parent as well as protect their children

VICTIMS ARE NOT PERFECT

**Anger, Ambivalence, Prevarication
Depression, Substance Abuse**

**SEPARATION, PROTECTION
SECURITY
Can be transformative**

Meeting Victims' Needs

**What can we do
- *as Judicial Officers* -
to help meet the needs of
victims and children?**



**As a Judicial Officer You Can
Address Victim & Children Needs
with more than just an OP**

**Economic Relief
= Victim autonomy**

**Well Crafted Custody Order
= Victim/Child Safety**

Victim Behavior
Learning Points

- Relationships – Very Complex
- Many Factors May Be in Play at Any Given Time in a Relationship
- Leaving is a Process
- Anger From Attorney or Court is Likely to Foreclose Further Communication
- Battered Mothers are Trying to Parent as Well as Protect Children

Practice Considerations

- Remember DV is about Power & Control so:
 - Avoid Mediation
 - Avoid Couples Counseling
 - Consider Impact on Children (ask for AFC)
- Consider not agreeing to a Consent Order
- Amend Petition to include detail, history, etc.
- Ask for longer duration order if aggravating circumstances

■

Final Learning Points

- Remember: DV is about Power & Control
- Understanding Victim's Behaviors is helpful
- Well Crafted Order Can Provide Safety
- Obtaining Economic Relief Can be Transformative for a Victim & Children

■

Questions?

■

That's All Folks...



Orders of Protection in Family Court Cases

Family Court Act –Article 8 & Criminal Procedure Law 530.12

- FCA §812- Procedures
- FCA §828- Temporary Order of Protection; Temporary Order for Support
- FCA §842-Orders of Protection
- FCA §842(a) & DRL §252 (9) Suspension, revocation, ineligibility for license to carry firearms
- CPL 530.12- Protection for victims of family offenses

Determining whether a given relationship is “intimate” for FCA §812 purposes (when the parties are not married, have never married or cohabitated):

A family court’s jurisdiction in family offense proceedings is limited by specific enumerated acts which are alleged to have occurred and the relationship between the parties. FCA §812(1)(e) amended July 21, 2008 the Legislature expanded upon the definition of “members of the same family or household” to include, among others, “persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.” Notably, the Legislature expressly excluded for the definition of “intimate relationship” casual acquaintances and ordinary fraternization between individuals in the business or social context. Aside from this exclusion.

Might Require a hearing

Here’s some examples of recent case decisions

§ 812. Procedures for family offense proceedings

1. **Jurisdiction.** The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision one of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, criminal obstruction of breathing or blood circulation, strangulation in the second degree, strangulation in the first degree, assault in the second degree, assault in the third degree or an attempted assault, criminal obstruction of breathing or blood circulation or strangulation between spouses or former spouses, or between parent and child or between members of the same family or household except that if the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law, then the family court shall have exclusive jurisdiction over such proceeding. Notwithstanding a complainant’s election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section. In any proceeding pursuant to this article, a court shall not deny an order of protection, or dismiss a petition, solely on the basis that the acts or events alleged are not relatively contemporaneous with the date of the petition, the conclusion of the fact-finding or the conclusion of the dispositional hearing. For purposes of this article, “disorderly conduct” includes disorderly conduct not in a public place. For purposes of this article, “members of the same family or household” shall mean the following:

- (a) persons related by consanguinity or affinity;

(b) persons legally married to one another;

(c) persons formerly married to one another regardless of whether they still reside in the same household;

(d) persons who have a child in common regardless of whether such persons have been married or have lived together at any time; and

(e) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship".

2. Information to petitioner or complainant. The chief administrator of the courts shall designate the appropriate persons, including, but not limited to district attorneys, criminal and family court clerks, corporation counsels, county attorneys, victims assistance unit staff, probation officers, warrant officers, sheriffs, police officers or any other law enforcement officials, to inform any petitioner or complainant bringing a proceeding under this article, before such proceeding is commenced, of the procedures available for the institution of family offense proceedings, including but not limited to the following:

(a) That there is concurrent jurisdiction with respect to family offenses in both family court and the criminal courts;

(b) That a family court proceeding is a civil proceeding and is for the purpose of attempting to stop the violence, end the family disruption and obtain protection. Referrals for counseling, or counseling services, are available through probation for this purpose;

(c) That a proceeding in the criminal courts is for the purpose of prosecution of the offender and can result in a criminal conviction of the offender;

(d) That a proceeding or action subject to the provisions of this section is initiated at the time of the filing of an accusatory instrument or family court petition, not at the time of arrest, or request for arrest, if any;

(e) Repealed.

(f) That an arrest may precede the commencement of a family court or a criminal court proceeding, but an arrest is not a requirement for commencing either proceeding; provided, however, that the arrest of an alleged offender shall be made under the circumstances described in subdivision four of section 140.10 of the criminal procedure law;

(g) That notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section.

3. Official responsibility. No official or other person designated pursuant to subdivision two of this section shall discourage or prevent any person who wishes to file a petition or sign a complaint from having access to any court for that purpose.

4. Official forms. The chief administrator of the courts shall prescribe an appropriate form to implement subdivision two of this section.

5. Notice. Every police officer, peace officer or district attorney investigating a family offense under this article shall advise the victim of the availability of a shelter or other services in the community, and shall immediately give the victim written notice of the legal rights and remedies available to a victim of a family offense under the relevant provisions of the criminal procedure law, the family court act and the domestic relations law. Such notice shall be available in English and Spanish and, if necessary, shall be delivered orally and shall include but not be limited to the following statement:

"If you are the victim of domestic violence, you may request that the officer assist in providing for your safety and that of your children, including providing information on how to obtain a temporary order of protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you, or assist in making arrangement to take you, and your children to a safe place within such officer's jurisdiction, including but not limited to a domestic violence program, a family member's or a friend's residence, or a similar place of safety. When the officer's jurisdiction is more than a single county, you may ask the officer to take you or make arrangements to take you and your children to a place of safety in the county where the incident occurred. If you or your children are in need of medical treatment, you have the right to request that the officer assist you in obtaining such medical treatment. You may request a copy of any incident reports at no cost from the law enforcement agency. You have the right to seek legal counsel of your own choosing and if you proceed in family court and if it is determined that you cannot afford an attorney, one must be appointed to represent you without cost to you.

You may ask the district attorney or a law enforcement officer to file a criminal complaint. You also have the right to file a petition in the family court when a family offense has been committed against you. You have the right to have your petition and request for an order of protection filed on the same day you appear in court, and such request must be heard that same day or the next day court is in session. Either court may issue an order of protection from conduct constituting a family offense which could include, among other provisions, an order for the respondent or defendant to stay away from you and your children. The family court may also order the payment of temporary child support and award temporary custody of your children. If the family court is not in session, you may seek immediate assistance from the criminal court in obtaining an order of protection.

The forms you need to obtain an order of protection are available from the family court and the local criminal court (the addresses and telephone numbers shall be listed). The resources available in this community for information relating to domestic violence, treatment of injuries, and places of safety and shelters can be accessed by calling the following 800 numbers (the statewide English and Spanish language 800 numbers shall be listed and space shall be provided for local domestic violence hotline telephone numbers).

Filing a criminal complaint or a family court petition containing allegations that are knowingly false is a crime.”

The division of criminal justice services in consultation with the state office for the prevention of domestic violence shall prepare the form of such written notice consistent with the provisions of this section and distribute copies thereof to the appropriate law enforcement officials pursuant to subdivision nine of section eight hundred forty-one of the executive law. Additionally, copies of such notice shall be provided to the chief administrator of the courts to be distributed to victims of family offenses through the family court at such time as such persons first come before the court and to the state department of health for distribution to all hospitals defined under article twenty-eight of the public health law. No cause of action for damages shall arise in favor of any person by reason of any failure to comply with the provisions of this subdivision except upon a showing of gross negligence or willful misconduct.

§ 828. Temporary order of protection; temporary order for child support

1. (a) Upon the filing of a petition or counter-claim under this article, the court for good cause shown may issue a temporary order of protection, which may contain any of the provisions authorized on the making of an order of protection under section eight hundred forty-two, provided that the court shall make a determination, and the court shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this subdivision, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the temporary order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons.

(b) Upon the filing of a petition under this article, or as soon thereafter as the petitioner appears before the court, the court shall advise the petitioner of the right to proceed in both the family and criminal courts, pursuant to the provisions of section one hundred fifteen of this act.

2. A temporary order of protection is not a finding of wrongdoing.

3. The court may issue or extend a temporary order of protection *ex parte* or on notice simultaneously with the issuance of a warrant, directing that the respondent be arrested and brought before the court, pursuant to section eight hundred twenty-seven of this article.

4. Notwithstanding the provisions of section eight hundred seventeen of this article the court may, together with a temporary order of protection issued pursuant to this section, issue an order for temporary child support, in an amount sufficient to meet the needs of the child, without a showing of immediate or emergency need. The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of the respondent may be unavailable. Where such information is available, the court may make an award for temporary child support pursuant to the formula set forth in subdivision one of section four hundred thirteen of this act. An order making such award shall be deemed to have been issued pursuant to article four of this act. Upon making an order for temporary child support pursuant to this subdivision, the court shall advise the petitioner of the availability of child support enforcement services by the support collection unit of the local department of social services, to enforce the temporary order and to assist in securing continued child support, and shall set the support matter down for further proceedings in accordance with article four of this act.

Where the court determines that the respondent has employer-provided medical insurance, the court may further direct, as part of an order of temporary support under this subdivision, that a medical support execution be issued and served upon the respondent's employer as provided for in section fifty-two hundred forty-one of the civil practice law and rules.

§ 842. Order of protection

An order of protection under section eight hundred forty-one of this part shall set forth reasonable conditions of behavior to be observed for a period not in excess of two years by the petitioner or respondent or for a period not in excess of five years upon (i) a finding by the court on the record of the existence of aggravating circumstances as defined in paragraph (vii) of subdivision (a) of section eight hundred twenty-seven of this article; or (ii) a finding by the court on the record that the conduct alleged in the petition is in violation of a valid order of protection. Any finding of aggravating circumstances pursuant to this section shall be stated on the record and upon the order of protection. The court may also, upon motion, extend the order of protection for a reasonable period of time upon a showing of good cause or consent of the parties. The fact that abuse has not occurred during the pendency of an order shall not, in itself, constitute sufficient ground for denying or failing to extend the order. The court must articulate a basis for its decision on the record. The duration of any temporary order shall not by itself be a factor in determining the length or issuance of any final order. Any order of protection issued pursuant to this section shall specify if an order of probation is in effect. Any order of protection issued pursuant to this section may require the petitioner or the respondent:

- (a) to stay away from the home, school, business or place of employment of any other party, the other spouse, the other parent, or the child, and to stay away from any other specific location designated by the court, provided that the court shall make a determination, and shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this subdivision, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons;
- (b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;
- (c) to refrain from committing a family offense, as defined in subdivision one of section eight hundred twelve of this act, or any criminal offense against the child or against the other parent or against any person to whom custody of the child is awarded, or from harassing, intimidating or threatening such persons;
- (d) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in this proceeding or in any other proceeding or action under this act or the domestic relations law;
- (e) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child;

(f) to pay the reasonable counsel fees and disbursements involved in obtaining or enforcing the order of the person who is protected by such order if such order is issued or enforced;

(g) to require the respondent to participate in a batterer's education program designed to help end violent behavior, which may include referral to drug and alcohol counseling, and to pay the costs thereof if the person has the means to do so, provided however that nothing contained herein shall be deemed to require payment of the costs of any such program by the petitioner, the state or any political subdivision thereof; and

(h) to provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the order.

(i) 1. to refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the petitioner or a minor child residing in the household.

2. "Companion animal", as used in this section, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law.

(j) to observe such other conditions as are necessary to further the purposes of protection.

The court may also award custody of the child, during the term of the order of protection to either parent, or to an appropriate relative within the second degree. Nothing in this section gives the court power to place or board out any child or to commit a child to an institution or agency.

Notwithstanding the provisions of section eight hundred seventeen of this article, where a temporary order of child support has not already been issued, the court may in addition to the issuance of an order of protection pursuant to this section, issue an order for temporary child support in an amount sufficient to meet the needs of the child, without a showing of immediate or emergency need. The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of the respondent may be unavailable. Where such information is available, the court may make an award for temporary child support pursuant to the formula set forth in subdivision one of section four hundred thirteen of this act. Temporary orders of support issued pursuant to this article shall be deemed to have been issued pursuant to section four hundred thirteen of this act.

Upon making an order for temporary child support pursuant to this subdivision, the court shall advise the petitioner of the availability of child support enforcement services by the support collection unit of the local department of social services, to enforce the temporary order and to assist in securing continued child support, and shall set the support matter down for further proceedings in accordance with article four of this act.

Where the court determines that the respondent has employer-provided medical insurance, the court may further direct, as part of an order of temporary support under this subdivision, that a medical support execution be issued and served upon the respondent's employer as provided for in section fifty-two hundred forty-one of the civil practice law and rules.

In any proceeding in which an order of protection or temporary order of protection or a warrant has been issued under this section, the clerk of the court shall issue to the petitioner and respondent and his counsel and to any other person affected by the order a copy of the order of protection or temporary

order of protection and ensure that a copy of the order of protection or temporary order of protection be transmitted to the local correctional facility where the individual is or will be detained, the state or local correctional facility where the individual is or will be imprisoned, and the supervising probation department or the department of corrections and community supervision where the individual is under probation or parole supervision.

Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section eight hundred twelve of this article.

In addition to the foregoing provisions, the court may issue an order, pursuant to section two hundred twenty-seven-c of the real property law, authorizing the party for whose benefit any order of protection has been issued to terminate a lease or rental agreement pursuant to section two hundred twenty-seven-c of the real property law.

§842-a. Suspension and revocation of a license to carry, possess, repair or dispose of a firearm or firearms pursuant to section 400.00 of the penal law and ineligibility for such a license; order to surrender firearms.

1. Mandatory and permissive suspension of firearms license and ineligibility for such a license upon the issuance of a temporary order of protection. Whenever a temporary order of protection is issued pursuant to section eight hundred twenty-eight of this article:

(a) the court shall suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed where the court receives information that gives the court good cause to believe that: (i) the respondent has a prior conviction of any violent felony offense as defined in section 70.02 of the penal law; (ii) the respondent has previously been found to have willfully failed to obey a prior order of protection and such willful failure involved (A) the infliction of serious physical injury, as defined in subdivision ten of section 10.00 of the penal law, (B) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (C) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iii) the respondent has a prior conviction for stalking in the first degree as defined in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law; and

(b) the court may where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the temporary order of protection is issued, suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed.

2. Mandatory and permissive revocation or suspension of firearms license and ineligibility for such a license upon the issuance of an order of protection. Whenever an order of protection is issued pursuant to section eight hundred forty-one of this part:

(a) the court shall revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed where the court finds that the conduct which resulted in the issuance of the order of protection involved (i) the infliction of serious physical injury, as defined in subdivision ten of section 10.00 of the penal law, (ii) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; and

(b) the court may, where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection is issued, (i) revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license and order the immediate surrender of any or all firearms owned or possessed or (ii) suspend or continue to suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed.

3. Mandatory and permissive revocation or suspension of firearms license and ineligibility for such a license upon a finding of a willful failure to obey an order of protection. Whenever a respondent has been found, pursuant to section eight hundred forty-six-a of this part to have willfully failed to obey an order of protection issued by this court or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, in addition to any other remedies available pursuant to section eight hundred forty-six-a of this part:

(a) the court shall revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed where the willful failure to obey such order involves (i) the infliction of serious physical injury, as defined in subdivision ten of section 10.00 of the penal law, (ii) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iv) behavior constituting stalking in the first degree as defined in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law; and

(b) the court may where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection was issued, (i) revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, whether or not the respondent possesses such a license, and order the immediate surrender of

any or all firearms owned or possessed or (ii) suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed.

4. **Suspension.** Any suspension order issued pursuant to this section shall remain in effect for the duration of the temporary order of protection or order of protection, unless modified or vacated by the court.

5. **Surrender.** (a) Where an order to surrender one or more firearms has been issued, the temporary order of protection or order of protection shall specify the place where such firearms shall be surrendered, shall specify a date and time by which the surrender shall be completed and, to the extent possible, shall describe such firearms to be surrendered and shall direct the authority receiving such surrendered firearms to immediately notify the court of such surrender.

(b) The prompt surrender of one or more firearms pursuant to a court order issued pursuant¹ this section shall be considered a voluntary surrender for purposes of subparagraph (f) of paragraph one of subdivision a of section 265.20 of the penal law. The disposition of any such firearms shall be in accordance with the provisions of subdivision six of section 400.05 of the penal law.

(c) The provisions of this section shall not be deemed to limit, restrict or otherwise impair the authority of the court to order and direct the surrender of any or all pistols, revolvers, rifles, shotguns or other firearms owned or possessed by a respondent pursuant to this act.

6. **Notice.** (a) Where an order of revocation, suspension or ineligibility has been issued pursuant to this section, any temporary order of protection or order of protection issued shall state that such firearm license has been suspended or revoked or that the respondent is ineligible for such license, as the case may be.

(b) The court revoking or suspending the license, ordering the respondent ineligible for such license, or ordering the surrender of any firearm shall immediately notify the statewide registry of orders of protection and the duly constituted police authorities of the locality of such action.

(c) The court revoking or suspending the license or ordering the defendant ineligible for such license shall give written notice thereof without unnecessary delay to the division of state police at its office in the city of Albany.

(d) Where an order of revocation, suspension, ineligibility, or surrender is modified or vacated, the court shall immediately notify the statewide registry of orders of protection and the duly constituted police authorities of the locality concerning such action and shall give written notice thereof without unnecessary delay to the division of state police at its office in the city of Albany.

7. **Hearing.** The respondent shall have the right to a hearing before the court regarding any revocation, suspension, ineligibility or surrender order issued pursuant to this section, provided that nothing in this subdivision shall preclude the court from issuing any such order prior to a hearing. Where the court has issued such an order prior to a hearing, it shall commence such hearing within fourteen days of the date such order was issued.

8. Nothing in this section shall delay or otherwise interfere with the issuance of a temporary order of protection.

Criminal Procedure Law § 530.12 Protection for victims of family offenses

1. When a criminal action is pending involving a complaint charging any crime or violation between spouses, former spouses, parent and child, or between members of the same family or household, as members of the same family or household are defined in subdivision one of section 530.11 of this article, the court, in addition to any other powers conferred upon it by this chapter may issue a temporary order of protection in conjunction with any securing order committing the defendant to the custody of the sheriff or as a condition of any order of recognizance or bail or an adjournment in contemplation of dismissal. In addition to any other conditions, such an order may require the defendant:

(a) to stay away from the home, school, business or place of employment of the family or household member or of any designated witness, provided that the court shall make a determination, and shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this paragraph, provided further, however, that failure to make such a determination shall not affect the validity of such temporary order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the temporary order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, past or present injury, threats, drug or alcohol abuse, and access to weapons;

(b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;

(c) to refrain from committing a family offense, as defined in subdivision one of section 530.11 of this article, or any criminal offense against the child or against the family or household member or against any person to whom custody of the child is awarded, or from harassing, intimidating or threatening such persons;

(d) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety and welfare of a child, family or household member's life or health;

(e) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in this proceeding or in any other proceeding or

action under this chapter, the family court act or the domestic relations law;

(f) 1. to refrain from intentionally injuring or killing, without justification, any companion animal the defendant knows to be owned, possessed, leased, kept or held by the victim or a minor child residing in the household.

2. "Companion animal", as used in this section, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law.

(g) The court may issue an order, pursuant to section two hundred twenty-seven-c of the real property law, authorizing the party for whose benefit any order of protection has been issued to terminate a lease or rental agreement pursuant to section two hundred twenty-seven-c of the real property law.

2. Notwithstanding any other provision of law, a temporary order of protection issued or continued by a family court pursuant to section eight hundred thirteen of the family court act shall continue in effect, absent action by the appropriate criminal court pursuant to subdivision three of this section, until the defendant is arraigned upon an accusatory instrument filed pursuant to section eight hundred thirteen of the family court act in such criminal court.

3. The court may issue a temporary order of protection *ex parte* upon the filing of an accusatory instrument and for good cause shown. When a family court order of protection is modified, the criminal court shall forward a copy of such modified order to the family court issuing the original order of protection; provided, however, that where a copy of the modified order is transmitted to the family court by facsimile or other electronic means, the original copy of such modified order and accompanying affidavit shall be forwarded immediately thereafter.

4. The court may issue or extend a temporary order of protection *ex parte* or on notice simultaneously with the issuance of a warrant for the arrest of defendant. Such temporary order of protection may continue in effect until the day the defendant subsequently appears in court pursuant to such warrant or voluntarily or otherwise.

5. [Eff. Sept. 1, 2013, pursuant to L.1995, c. 3, § 74, par. d. See, also, opening paragraph above.] Upon sentencing on a conviction for any crime or violation between spouses, between a parent and child, or between members of the same family or household as defined in subdivision one of section 530.11 of this article, the court may in addition to any other disposition, including a conditional discharge or youthful offender adjudication, enter an order of protection. Where a temporary order of protection was issued, the court shall state on the record the reasons for issuing or not issuing an order of protection. The duration of such an order shall be fixed by the court and, in the case of a felony conviction, shall not exceed the greater of: (i) five years from the date of such sentencing, or (ii) three years from the date of the expiration of the maximum term of an indeterminate sentence of imprisonment actually imposed; or in the case of a conviction for a class A misdemeanor, shall not exceed three years from the date of such

sentencing; or in the case of a conviction for any other offense, shall not exceed one year from the date of sentencing. For purposes of determining the duration of an order of protection entered pursuant to this subdivision, a conviction shall be deemed to include a conviction that has been replaced by a youthful offender adjudication. In addition to any other conditions, such an order may require the defendant:

(a) to stay away from the home, school, business or place of employment of the family or household member, the other spouse or the child, or of any witness designated by the court, provided that the court shall make a determination, and shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this paragraph, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons;

(b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;

(c) to refrain from committing a family offense, as defined in subdivision one of section 530.11 of this article, or any criminal offense against the child or against the family or household member or against any person to whom custody of the child is awarded, or from harassing, intimidating or threatening such persons; or

(d) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety and welfare of a child, family or household member's life or health;

(e) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in this proceeding or in any other proceeding or action under this chapter, the family court act or the domestic relations law.

6. An order of protection or a temporary order of protection issued pursuant to subdivision one, two, three, four or five of this section shall bear in a conspicuous manner the term "order of protection" or "temporary order of protection" as the case may be and a copy shall be filed by the clerk of the court with the sheriff's office in the county in which the complainant resides, or, if the complainant resides within a city, with the police department of such city. The absence of such language shall not affect the validity of such order. A copy of such order of protection or temporary order of protection may from time to time be filed by the clerk of the court with any other police department or sheriff's office having jurisdiction of the residence, work place, and school of anyone intended to be protected by such order. A copy of the order may also be filed by the complainant at the appropriate police department or sheriff's office having jurisdiction. Any subsequent amendment or revocation of such order shall be filed in the same manner as herein provided. Such order of protection shall plainly state the date that such order expires.

6-a. The court shall inquire as to the existence of any other orders of protection between the defendant and the person or persons for whom the order of protection is sought.

7. A family offense subject to the provisions of this section which occurs subsequent to the issuance of an order of protection under this chapter shall be deemed a new offense for which the complainant may seek to file a new accusatory instrument and may file a family court petition under article eight of the family court act as provided for in section 100.07 of this chapter.

8. In any proceeding in which an order of protection or temporary order of protection or a warrant has been issued under this section, the clerk of the court shall issue to the complainant and defendant and defense counsel and to any other person affected by the order a copy of the order of protection or temporary order of protection and ensure that a copy of the order of protection or temporary order of protection be transmitted to the local correctional facility where the individual is or will be detained, the state or local correctional facility where the individual is or will be imprisoned, and the supervising probation department or department of corrections and community supervision where the individual is under probation or parole supervision. The presentation of a copy of such order or a warrant to any peace officer acting pursuant to his or her special duties or police officer shall constitute authority for him or her to arrest a person who has violated the terms of such order and bring such person before the court and, otherwise, so far as lies within his or her power, to aid in securing the protection such order was intended to afford.

9. If no warrant, order or temporary order of protection has been issued by the court, and an act alleged to be a family offense as defined in section 530.11 of this chapter is the basis of the arrest, the magistrate shall permit the complainant to file a petition, information or accusatory instrument and for reasonable cause shown, shall thereupon hold such respondent or defendant, admit to, fix or accept bail, or parole him or her for hearing before the family court or appropriate criminal court as the complainant shall choose in accordance with the provisions of section 530.11 of this chapter.

10. Punishment for contempt based on a violation of an order of protection or temporary order of protection shall not affect the original criminal action, nor reduce or diminish a sentence upon conviction for the original crime or violation alleged therein or for a lesser included offense thereof.

11. If a defendant is brought before the court for failure to obey any lawful order issued under this section, or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, and if, after hearing, the court is satisfied by competent proof that the defendant has willfully failed to obey any such order, the court may:

(a) revoke an order of recognizance or revoke an order of bail or order forfeiture of such bail and commit the defendant to custody; or

(b) restore the case to the calendar when there has been an adjournment in contemplation of dismissal and commit the defendant to custody; or

(c) revoke a conditional discharge in accordance with section 410.70 of this chapter and impose probation supervision or impose a sentence of imprisonment in accordance with the penal law based on the original conviction; or

(d) revoke probation in accordance with section 410.70 of this chapter and impose a sentence of imprisonment in accordance with the penal law based on the original conviction. In addition, if the act which constitutes the violation of the order of protection or temporary order of protection is a crime or a violation the defendant may be charged with and tried for that crime or violation.

12. The chief administrator of the courts shall promulgate appropriate uniform temporary orders of protection and orders of protection forms to be used throughout the state. Such forms shall be promulgated and developed in a manner to ensure the compatibility¹ of such forms with the statewide computerized registry established pursuant to section two hundred twenty-one-a of the executive law.

13. Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection when applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section 530.11 of this article.

14. The people shall make reasonable efforts to notify the complainant alleging a crime constituting a family offense when the people have decided to decline prosecution of such crime, to dismiss the criminal charges against the defendant or to enter into a plea agreement. The people shall advise the complainant of the right to file a petition in the family court pursuant to section 100.07 of this chapter and section one hundred fifteen of the family court act.

In any case where allegations of criminal conduct are transferred from the family court to the criminal court pursuant to paragraph (ii) of subdivision (b) of section eight hundred forty-six of the family court act, the people shall advise the family court making the transfer of any decision to file an accusatory instrument against the family court respondent and shall notify such court of the disposition of such instrument and the sentence, if any, imposed upon such respondent. Release of a defendant from custody shall not be delayed because of the requirements of this subdivision.

15. Any motion to vacate or modify an order of protection or temporary order of protection shall be on notice to the non-moving party, except as provided in subdivision three-b of this section.