

OFFICE for the PREVENTION of DOMESTIC VIOLENCE
Andrew M. Cuomo, Governor - Amy Barusch, Esq., Executive Director
NYS Hotline: 1-800-942-6906 | Spanish: 1-800-942-6908

Major Domestic Violence Legislation 1995-2010

2010

Strangulation - A.10161-A Lentol / S.6987-A Schneiderman

Creates a new Article 121 in the Penal Law, titled "Strangulation and Related Offenses," establishing the new crimes of criminal obstruction of breathing or blood circulation (A misdemeanor), strangulation in the second degree (D violent felony), and strangulation in the first degree (C violent felony). All offenses are added to the list of family offenses. In addition, the strangulation offenses are added to various sections of existing law for other considerations, such as DNA collection, hate crime prosecution, etc. Amends multiple sections of NYS laws, including Penal, Criminal Procedure, Domestic Relations, Executive, Mental Hygiene, Vehicle and Traffic, Social Services and the Family Court Act.

Laws of 2010, Chapter 405

Police Service of Orders of Protection, Extensions and Violations - A.11100 Weinstein / S.8058 Hassell-Thompson

Requires police officers to serve, or provide for the service of, temporary and permanent orders of protection, and any accompanying papers. The requirement also applies to extensions, modifications and violations of orders. The law extends the previous prohibition against charging fees for service of these additional orders. If service cannot be completed, the officer must provide to the court proof of attempted service, including the manner in which the service was attempted.

Amends Family Court Act §153-b; Domestic Relations Law §240(3-a)

Laws of 2010, Chapter 446

Orders of Protection Based on Non-contemporaneous Acts - A.8393-A Weinstein / S.5696-A Sampson

Prohibits Family Courts or Supreme Courts from dismissing a petition or denying an order of protection solely on the basis that the acts or events alleged are not relatively recent. The law also states that the duration of a temporary order cannot, by itself, be a factor in issuing or determining the length of a final order. Amends Family Court Act §446

Laws of 2010, Chapter 341

Protections for Victims in Rent-regulated Apartments - A.2365-A / S.3317-A Oppenheimer

Amends NYC Code and various sections of NYS law that govern rent-regulated

housing, to permit domestic violence victims to maintain their rental unit as their primary residence if they have left the unit because of the violence. To be eligible under this new provision, the tenant must be a victim of domestic violence, as defined in Social Services Law §459-a, and must state an intent to return to live in the unit.

Amends NYC Administrative Code: §26-403(e)(2)(i)(10); §26-502(a)(1)(f)

Amends NYS law:§4(5)(a)(11) of Chapter 576 of the laws of 1974 (Emergency Tenant Protection Act of 1974; §2(2)(1) of Chapter 274 of the laws of 1946 (Emergency Housing Rent Control Law)

Laws of 2010, Chapter 422

2008

Family Court Access (A.11707 Weinstein / S.8665 Winner)

Amends the criminal procedure law and the Family Court Act to allow more victims to seek an order of protection in Family Court. The new law expands the definition of family/household member to include victims who are or have been in an intimate relationship, regardless of whether they have lived with the abuser or whether the relationship is of a sexual nature. This will include LGBT and dating relationships (including teens). Mandatory arrest provisions will apply to these relationships when a crime has been committed. Previously, only individuals who are or have been married, share a child in common or are related by blood or marriage were eligible for an order of protection in Family Court.

Laws of 2008 Chapter 326

2007

Firearms/Licenses & Surrenders (A.618-A Paulin / S.4066 Robach)

Lowers the required level of injury from serious physical injury to physical injury for two provisions in the criminal procedure law: requires a criminal court, when issuing a temporary order of protection, to suspend a firearm license, order an individual ineligible for such a license and order the immediate surrender of all firearms owned or possessed by that individual, if the court receives information that the gun licensee was previously convicted of willfully violating an order of protection by inflicting *physical injury* upon another person requires a criminal court to revoke a firearm license, order an individual ineligible for such a license and order the immediate surrender of all firearms owned or possessed by that individual, if found to have willfully violated an order of protection by inflicting *physical injury* upon another person.

Laws of 2007, Chapter 198

Residential Lease Termination Amendment (A.9244 Heastie / S.6351 Robach)

The residential lease termination bill was signed into law on June 4, 2007. It was amended on August 15, 2007. Together, the original law and the amendment authorize courts to issue orders terminating the lease or rental agreement of a domestic violence victim who has obtained an order of protection and can prove that she is at substantial risk if she remains in the dwelling. The law requires multiple procedural steps:

1. the victim must first request that the landlord release him/her from the lease
2. the victim's financial obligations to the landlord must be satisfied
3. the victim must give notice to the landlord and any co-tenant
4. the lease may be bifurcated between the co-tenant and the victim, if the co-tenant does not object

Law of 2007, Chapter 616

2006

Pets Covered in Orders of Protection (S.7691 Padavan / A.10767-A Rosenthal)

Allows protection of companion animals to be added to an order of protection issued in a criminal court or Family Court. Requires the respondent to refrain from intentionally injuring or killing any companion animal the respondent knows to be owned, possessed, leased, kept or held by the petitioner or a minor child living in the household. Companion animals/pets are defined as a dog, cat or any other domesticated animal that lives in or near the household, but does not include farm animals.

Laws of 2006, Chapter 253

Workplace Violence (S.6441 Spano / A.9691 John)

Requires public employers to develop and implement programs to prevent workplace violence. Any public employee, or representative of public employees, who believes that a serious violation of a safety or health standard exists, or an imminent danger exists, may request an inspection by the Department of Labor. Mandates that the Commissioner of Labor enforce this requirement.

Laws of 2006, Chapter 82

Criminal Court Orders of Protection (S.6871-A Saland / A.9907-A Paulin)

Extends the maximum length of criminal court orders of protection. Felony convictions increase from five to an eight year maximum, A misdemeanors from a three to five year maximum and all other offenses increase from a one to two year maximum.

Laws of 2006, Chapter 215

2005

Improved Service of Orders of Protection (S.3475-A Saland/A.6823 Stringer)

Facilitates service of orders of protection in matrimonial and family court proceedings:

- creates alternative to court delivery to the central headquarters of police agencies, by allowing petitioner to personally deliver temporary order of protection to law enforcement personnel
- adds O/P's issued upon default, to delivery and service provisions in Family Court Act and Domestic Relations Law
- requires Sheriffs, city, town and village police to make service
- requires date and time of service to be entered on statewide registry of O/P's and warrants

- provides that same service provisions be available for TOP's and default O/P's issued in Supreme Court
Laws of 1995, Chapter 429

Expansion of Family Offenses (S.3943 Saland/ A.6825 Matusow)

Adds aggravated harassment second degree (A misdemeanor) to the definition of family offense in the Family Court Act and Criminal Procedure Law. This offense includes the "stalking" behaviors common in domestic violence cases -- telephone and mail harassment.

Laws of 1995, Chapter 440

Revised Conditions for Orders of Protection (S.4987-A Saland/ A.6830-A Weinstein)

Redefines permissible terms and conditions in orders of protection in family court, matrimonial and criminal cases:

- adds uniform language to the condition directing an individual to stay away from a party, a child or other member of the household -- makes Family Court Act and Domestic Relations Law consistent with Criminal Procedure Law, directing a party to "stay away from the home, school or place of employment"
- visitation language is expanded to persons other than parents
- current "offensive conduct" language is made more specific:
 - "refrain from committing a family offense.. or any criminal offense... or from harassing, intimidating or threatening such persons"
 - "give proper attention to the home" is eliminated; replaced by new condition -- party out of the home can retrieve belongings, accompanied by a police officer
 - "acts of commission or omission that tend to make the home not a proper place" is replaced by new condition -- "to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child"

Laws of 1995, Chapter 483

2003

Order of Protection Extension (A.8923-A Paulin / S.5532 Saland)

Extends the maximum length that orders of protection can be granted in Family Court from 1 to 2 years, and from 3 to 5 years, if aggravating circumstances exist (such as a violation of a current order of protection).

Laws of 2003, Chapter 579

1999

Unemployment benefits (A.2309-B Sidikman / S.827-B Marcellino)

Provides that in cases where a victim of domestic violence voluntarily separates from employment as a result of the abuse, separation may be deemed for good cause for the purposes of unemployment benefits.

Laws of 1999, Chapter 268

Family Offense Court Jurisdiction (A.8466 Weinstein / S.5677 Saland)

Provides that a victim's choice to proceed in Family Court does not divest the criminal court of jurisdiction over the family offense.

Laws of 1999, Chapter 125

1998

Primary Physical Aggressor (A.8672 Weinstein/S.5791 Saland)

Amends mandatory arrest provisions to clarify that in family offense cases, where both parties allege an offense, arrest of both parties is not required if an officer believes one party was acting in self- defense. In misdemeanor cross-complaint cases, police are not required to arrest both parties, only the primary physical aggressor. Specific guidelines are provided to assist in the identification of the primary physical aggressor. The bill also prohibits an officer from threatening arrest in order to discourage a person's request for police intervention and specifies that arrest may not be based on a complainant's willingness to testify or participate in a subsequent judicial proceeding. The Division of Criminal Justice Services and the Office for the Prevention of Domestic Violence are required to develop guidelines for the implementation of this law by police agencies.

Laws of 1997, Chapter 4

Workplace Violence Policy (A.8289 Nolan/S.4853-A Rath)

Requires the Office for the Prevention of Domestic Violence, with the assistance of the Department of Labor and a task force representing the concerns of employers, employees and domestic violence advocates to develop a model domestic violence employee awareness and assistance policy for businesses in New York State. The Office will provide information and technical support to businesses and will survey businesses, in four years, to determine to what extent the model policy is adopted.

Laws of 1997, Chapter 368

1996

Domestic Violence/Custody Factor (A.2446-C Weinstein/S.7403-B Saland)

The new law amends the Family Court Act and Domestic Relations law, and requires judges to consider the effect of domestic violence in assessing the best interests of a child, or children, when making custody and visitation determinations.

Laws of 1996, Chapter 85

Insurance Discrimination (A.2769-E Stringer/S.6749-B Velella)

This law prohibits insurance companies and health maintenance organizations from discriminating against domestic violence victims. It specifically outlaws:

- designating domestic violence as a preexisting condition
- denying or canceling an insurance policy or requiring a higher premium or payment where the insured is/has been a domestic violence victim.

The Superintendent of the NYS Insurance Department is required to develop rules, in consultation with the Department of Social Services and the Office for the Prevention of Domestic Violence, to assist insurers in guarding against the disclosure of the address
Laws of 1996, Chapter 174

Victim Rights (A.8763-A Feldman/S.6257-A Hoblock)

Prohibits an employer from penalizing or firing an employee, who, as the victim of a criminal offense, exercises his or her rights as provided in Criminal Procedure Law, the Family Court Act, and the Executive Law, including the need to appear in court or consult with a district attorney. If the victim of a crime is deceased as a result of the offense, the next of kin is afforded the same protection. The bill also covers a representative of the victim, or a good Samaritan as defined by law.
Laws of 1996, Chapter 331

Stronger Penalties for Order of Protection Violations (A.11276 John/S.7930 Hoblock)

This law expands the acts that will constitute criminal contempt in the first degree (E felony), when committed in violation of an Order of Protection, to include the following:

- intentionally placing or attempting to place a person in reasonable fear of physical injury by possession or threat of a weapon, by a course of conduct or repeated behavior over a period of time, or by mechanical/electronic communication, telephone, telegraph or mail;
- Harassment, by making repeated telephone calls or by threatening or actually striking, kicking, shoving, or other physical contact; and
- physically menacing.

The law also increases the penalty for violations of an Order of Protection when the violating behavior causes physical injury, constituting the new crime of Aggravated Criminal Contempt, a D felony.
Laws of 1996, Chapter 353