

Arraignment, People's Obligation, Rights to Defendant, Determination	
<p>(1) What charges does this statute apply to?</p>	<p>This statute applies <u>only</u> to PL 240.26 charges where the People allege that such offense was committed against a member of the same family or household as the defendant, as defined in CPL 530.11(1). It should be noted that there are specific procedures detailed in CPL 170.10.8-a(a) & (b) that must be adhered to while the case is both pending prosecution and upon conviction. The actual conviction must have occurred on or after January 14, 2010.</p>
<p>(2) What if the original arraignment accusatory instrument does not charge PL 240.26, does this statute apply to cases that are reduced from one charge to PL 240.26?</p>	<p>Yes. If the original accusatory instrument did not charge the violation of PL 240.26, Harass. 2nd, but was reduced to that charge, <u>and</u> the People were seeking to establish the relationship that is detailed in CPL 530.11 in connection with the amended charge, the same procedures would need to be followed as if the reduced charge had been filed in the first instance. The statute is clear that the defendant would need to be arraigned on the reduced charge(s) (see CPL § 170.10.1).</p>
<p>(3) Who is responsible for identifying whether these PL 240.26 charges meet those requirements?</p>	<p>The People of the State of New York. CPL 170.10.8-a(a) sets forth the procedure, specifically: <i>Where an information, a simplified information, a prosecutor's information, a misdemeanor complaint, a felony complaint or an indictment charges harassment in the second degree as defined in section 240.26 of the penal law, the people may serve upon the defendant and file with the court a notice alleging that such offense was committed against a member of the same family or household as the defendant, as defined in subdivision one of section 530.11 of this chapter.</i></p>
<p>(4) When should the People serve and file such notice?</p>	<p>Within fifteen days after arraignment on the PL 240.26 Harass. 2nd charge. CPL 170.10.8-a(a) ...Such notice must be served within fifteen days after arraignment on an information, a simplified information, a prosecutor's information, a misdemeanor complaint, a felony complaint or an indictment for such charge and before trial. Such notice must include the name of the person alleged to be a member of the same family or household as the defendant and specify the specific family or household relationship as defined in subdivision one of section 530.11 of this chapter.</p> <ul style="list-style-type: none"> • Note: This would apply to charges of PL 240.26 that are either original arraignment charges or reduction charges.
<p>(5) What if the original accusatory instrument charges PL 240.26 and there are no other printable offenses filed, do the People still need to file such notice?</p>	<p>If the People are seeking to establish the relationship, the simple answer is, "yes," they must always file a notice to trigger a court to allocute the defendant on the notice.</p>

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<p>(6) Are there any other obligations that the court must adhere to when the defendant is arraigned on PL 240.26 charges?</p>	<p>There are certain rights that the deft must be informed of relating to this charge at arraignment. Please see CPL 170.10.4(e): <i>4. Except as provided in subdivision five, the court must inform the defendant: (e) Where an information, a simplified information, a prosecutor's information, a misdemeanor complaint, a felony complaint or an indictment charges harassment in the second degree, as defined in section 240.26 of the penal law, if there is a judgment of conviction for such offense and such offense is determined to have been committed against a member of the same family or household as the defendant, as defined in subdivision one of section 530.11 of this chapter, the record of such conviction shall be accessible for law enforcement purposes and not sealed, as specified in paragraph (a) and subparagraph (vi) of paragraph (d) of subdivision one of section 160.55 of this title;...</i></p>
<p>(7) What if the People do not serve and file the notice alleging the relationship? What impact does it have on the case designation?</p>	<p>Counsel's office has expressed that the statute makes it clear that if the People intend to establish the relationship detailed in CPL 530.11, it is incumbent upon them to timely file such notice upon the defendant and the court. It is the determination of your judge that should govern how the disposition status of the case is ultimately reported.</p>
<p>(8) Is the notice that is served and filed by the People sufficient to establish the relationship detailed in CPL 530.11?</p>	<p>No. The notice that is served and filed by the people is merely an allegation that the defendant may either stipulate or admit to, or deny. See Cpl 170.10.8-a(b): If he stipulates or admits to the allegation:</p> <ul style="list-style-type: none"> • If a defendant, charged with harassment in the second degree as defined in section 240.26 of the penal law stipulates, or admits in the course of a plea disposition, that the person against whom the charged offense is alleged to have been committed is a member of the same family or household as the defendant, as defined in subdivision one of section 530.11 of this chapter, such allegation shall be deemed established for purposes of paragraph (a) and subparagraph (vi) of paragraph (d) of subdivision one of section 160.55 of this title. <p>If the defendant denies such allegation:</p> <ul style="list-style-type: none"> • If the defendant denies such allegation, the people may, by proof beyond a reasonable doubt, prove as part of their case that the alleged victim of such offense was a member of the same family or household as the defendant. In such circumstances, the trier of fact shall make its determination with respect to such allegation orally on the record or in writing.
<p>(9) Who is the trier of fact in a jury trial?</p>	<p>In a criminal jury trial, the jury is the trier of fact. The People would need to prove this relationship detailed in CPL 530.11 beyond a reasonable doubt, at trial.</p>

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<p>(10) Is there a specific time frame that the trier of fact must make the determination that the relationship detailed in CPL 530.11 is established?</p>	<p>If the defendant stipulates or admits to the People's allegation, it is deemed established. Technically, if the defendant denies the allegation, the People <u>must</u> prove the allegation beyond a reasonable doubt, before the close of their case, not before conviction. See CPL 170.10 8-a(b).</p>
<p>(11) If the defendant denies the allegation, how is the final determination made? Can it be established at a hearing?</p>	<p>If the defendant denies the allegation, the determination must be made as part of the trial and couldn't be done at a hearing.</p>

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Criminal Disposition Reporting, Notifications, Sealing	
(12) Once it has been determined that a defendant charged with PL 240.26 committed such offense against a family or household member as detailed CPL 530.11, what is the duty of the clerk?	The court must use new specific disposition codes in their criminal disposition reporting to distinguish this charge from one that does not carry the family offense designation. The disposition codes vary depending on whether your court is a CRIMS court or a CDR court.
(13) When should this family offense designation be reported?	This charge designation must be applied at conviction. The actual conviction must have occurred on or after January 14, 2010.
(14) If a defendant is convicted of PL 240.26 as a Family Offense, is the case still sealed?	Yes. The case is still sealed pursuant to CPL 160.55.
(15) Should we continue to send sealing notices to Police Agencies as usual procedure?	<p>The statute does not specifically address the notification requirements of the courts as to sealing in these cases.</p> <p>Prior to this legislation being enacted, the level of sealing detailed under CPL 160.55 1(c) would have barred a Police Agency from making the prints or the official records and papers relating to the arrest “<i>available to any person or public or private agency.</i>” However, the new section CPL 170.10 4(e) indicates that when a defendant has been convicted of PL 240.26 as determined by CPL 170.10 8-a, that information on file with such police agency may now be made available to certain agencies “<i>of any municipality</i>”, upon arrest for law enforcement purposes.</p> <p>Since the statute now provides for this distinction, it is recommended that each court consider:</p> <ul style="list-style-type: none">• Examining the content of their sealing notices/orders.• Initiating a dialogue with the appropriate law enforcement agencies to ensure that the court is providing the information that allows them to identify these cases. <p>Courts and Police Agencies should be cautioned that the case is still sealed pursuant to CPL 160.55 in all other respects.</p>

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<p>(16) What disposition codes should be used for convictions to PL 240.26 as determined by CPL 170.10 8-a?</p>	<p>In addition to all other required data entry to indicate that this is a Family Offense, Non-CRIMS Courts should refer to their appropriate CDR Manual. CRIMS Courts should refer to CRIMS Bulletins No.1 & 2 - 2010.</p>
<p>(17) When should these new disposition codes be used?</p>	<p>These new disposition codes should only be used when:</p> <ul style="list-style-type: none"> • The defendant has been convicted of PL 240.26, <u>and</u> • The People have timely served upon the defendant and filed with the court a notice that alleged that the offense was committed against a member of the same family or household as the defendant as defined in CPL 530.11, <u>and</u> • There has been a determination, based on CPL 170.10.8-a(b), that the person against whom the charged offense is alleged to have been committed is a member of the same family or household as the defendant, as defined in CPL 530.11(1). <ul style="list-style-type: none"> • <i>NOTE: In making such determination, the defendant should have stipulated or admitted to the allegations in the People’s notice it should have been proven at trial by proof beyond a reasonable doubt.</i> • The disposition codes should be used at the time the conviction is being entered into your case management system. The court should not wait until sentence or until all fines have been paid to enter this disposition.
<p>(18) What do the CRIMS and Non-CRIMS codes stand for?</p>	<p>The codes were selected somewhat arbitrarily and are used to:</p> <ul style="list-style-type: none"> • Alert DCJS that any fingerprints associated with this arrest should not be destroyed, despite the CPL 160.55 sealing. • Identify these cases as Family Offense convictions based on CPL 170.10 8-a(a) for statistical purposes. <ul style="list-style-type: none"> • <i>NOTE: This is not a new charge. It is an indicator for reporting purposes. It does not change the fact that there is a conviction (PG, TFG, CONV).</i>

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<p>(19) If there were never any fingerprints required or taken on the original arrest, why are the courts required to report to DCJS?</p>	<p>The disposition code is not used exclusively to notify DCJS.</p> <ul style="list-style-type: none"> • If the charge originated as a <u>printable offense</u>, the disposition code will be submitted to DCJS to alert them to preserve the fingerprints associated with this arrest. • If the charge originated as a <u>nonprintable offense</u>, and the court has made the determination based on the People’s allegation that the offense was committed against a member of the same family or household, the “F” for non-CRIMS courts or “FP” for CRIMS courts should be still used for the courts obligation to report Family Offense data to OCA pursuant to Judiciary Law 212.2(e).
<p>(20) What information should be entered into my case management system when recording this type of disposition?</p>	<p>There are two levels of information that need to be reported on this conviction.</p> <p>1- Generally, for any offense, pending or disposed, that meets the criteria for Family Offenses detailed in CPL 530.11 & FCA 812, your staff should follow the standard reporting procedure for Family Offenses (see your court’s CDR Manual or CRIMS Bulletins)</p> <p>2- If the conviction is to PL 240.26 and the requirements set forth in CPL 170.10 8-a(a)&(b) have been met, the new disposition codes should be entered <u>in addition to</u> the court’s standard reporting of Family Offenses.</p>
<p>(21) If I have used the new “F” disposition code for the PL 240.26 as a Family Offense, do I still need to use the Family Offense “Y/N” field and indicate the relationships?</p>	<p>Yes. This information is required for statistical purposes on pending and disposed of cases.</p>
<p>(22) If I have indicated “Y” in the Family Offense field, and have indicated the relationships, do I still need to use the new “F” disposition code?</p>	<p>Only if the charge is PL 240.26 <u>AND</u> if the requirements set forth in CPL 170.10 8-a(a)&(b) have bet met.</p>
<p>(23) How do I respond to inquiries from the public?</p>	<p>As with any other case that receives a CPL 160.55 sealing, the case record remains open only in the court.</p>
<p>(24) Should the fact that the conviction was to a Family Offense be included on the Certificate of Disposition issued by the court?</p>	<p>No. The Certificate of Disposition issued by the court should simply indicate that the conviction was to PL 240.26 without reference to the Family Offense designation.</p>

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(26) Will the PL 240.26 conviction for which the fingerprints are being kept on record continue to appear on the defendant's rapsheet?

CPL 170.10 4(e) Where an information, a simplified information, a prosecutor's information, a misdemeanor complaint, a felony complaint or an indictment charges harassment in the second degree, as defined in section 240.26 of the penal law, if there is a judgment of conviction for such offense and such offense is determined to have been committed against a member of the same family or household as the defendant, as defined in subdivision one of section 530.11 of this chapter, the record of such conviction shall be accessible for law enforcement purposes and not sealed, as specified in paragraph (a) and subparagraph (vi) of paragraph (d) of subdivision one of section 160.55 of this title;