

**ARRAIGNMENT FOR SENTENCE  
ON A CONVICTION OF A DOMESTIC VIOLENCE  
MISDEMEANOR<sup>1</sup>**

As you should be aware, the People have served on you a Notice alleging that you and the victim of the crime(s) you were convicted of, namely, (specify), were members of the same family or household, in that (specify the alleged relationship in the Notice).<sup>2</sup>

Have you seen and discussed the Notice and that allegation with your lawyer?

Under our law, you may admit or deny the allegation that you are a member of the same family or household of the victim or you may stand mute. If you deny the allegation or stand mute, you will be entitled to a hearing solely on the allegation contained in the Notice. If necessary, you may have an adjournment to prepare for the hearing. At the hearing, the People will be required to prove beyond a reasonable doubt that you are related or situated to the victim in the manner alleged in the Notice.<sup>3</sup> If the allegation is admitted, or sustained after a hearing, that determination and the conviction will be reported to the division of criminal justice services, the central repository of criminal history records.

Do you understand?

Do you admit or deny the allegation that you are related or situated to the victim of such crime in the manner described in Notice?<sup>4</sup>

*If the defendant admits:*

Based on the sufficiency of the allegation in the Notice and the defendant's admission, the relationship alleged in the Notice is deemed established.

*If the defendant denies or stands mute:*

A hearing is ordered.

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1. CPL 370.15(1) provides: “When a defendant has been charged with assault in the third degree, menacing in the third degree, menacing in the second degree, criminal obstruction of breathing or blood circulation, unlawful imprisonment in the second degree, coercion in the third degree, criminal tampering in the third degree, criminal contempt in the second degree, harassment in the first degree, aggravated harassment in the second degree, criminal trespass in the third degree, criminal trespass in the second degree, arson in the fifth degree, or attempt to commit any of the above-listed offenses, the people may, at arraignment or no later than forty-five days after arraignment, serve on the defendant and file with the court a notice alleging that the defendant and the person alleged to be the victim of such crime were members of the same family or household as defined in subdivision one of section 530.11 of this chapter.”

The failure of the People to file the Notice prior to the conviction does not prevent the People from filing it after conviction. *People v. Wragg*, 26 NY3d 403, 414-15 (2015).

2. CPL 370.15(2): “Such notice shall include the name of the person alleged to be the victim of such crime and shall specify the nature of the alleged relationship as set forth in subdivision one of section 530.11 of this chapter.”

CPL 530.11(1) states that "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".

3. CPL 370.15(2): “Upon conviction of such offense, the court shall advise the defendant that he or she is entitled to a hearing solely on the allegation contained in the notice and, if necessary, an adjournment of the sentencing proceeding in order to prepare for such hearing, and that if such allegation is sustained, that determination and conviction will be reported to the division of criminal justice services.”

4. CPL 370.15(3): "After having been advised by the court as provided in subdivision two of this section, the defendant may stipulate or admit, orally on the record or in writing, that he or she is related or situated to the victim of such crime in the manner described in subdivision one of this section. In such case, such relationship shall be deemed established. If the defendant denies that he or she is related or situated to the victim of the crime as alleged in the notice served by the people, or stands mute with respect to such allegation, then the people shall bear the burden to prove beyond a reasonable doubt that the defendant is related or situated to the victim in the manner alleged in the notice. The court may consider reliable hearsay evidence submitted by either party provided that it is relevant to the determination of the allegation. Facts previously proven at trial or elicited at the time of entry of a plea of guilty shall be deemed established beyond a reasonable doubt and shall not be relitigated. At the conclusion of the hearing, or upon such a stipulation or admission, as applicable, the court shall make a specific written determination with respect to such allegation."