



DUTCHESS COUNTY
DOMESTIC VIOLENCE
BENCH MANUAL

**Universal Response
to
Domestic Violence Project**

(November 2002)

DUTCHESS COUNTY DOMESTIC VIOLENCE BENCH MANUAL
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Acknowledgments

This is the second revision of the Dutchess County Domestic Violence Bench Manual, which was originally published in November 1996 and was updated in December 1997. Since that time, statutes and policies have continued to change and new legislation has been enacted, most notably the Clinic Access and Anti-Stalking Act of 1999, which added stalking crimes to the Penal Law. This revision reflects statutory changes through November 2002.

The original manual was initiated by the Steering Committee of the Universal Response to Domestic Violence in Dutchess County. Although its members have changed since the original manual was written, the Steering Committee continues to provide oversight and support for the manual's revisions.

The following sources were used in the preparation of the original manual:

1. "Guidelines for Family Offenses in Local Criminal Courts," by the Honorable Virginia Knaplund, Scarsdale Village Justice (January 1995).
2. "Domestic Violence" -- an outline prepared by the Honorable Duncan S. MacAffer, Menands Village Justice, for the Office of Court Administration (April 1995).
3. Family Violence Prevention Fund's publication, "Domestic Violence: The Crucial Role of the Judge in Criminal Court Cases. A National Model for Judicial Education" by Janet Carter, Candace Heisler, and Nancy K.D. Lemon (1991).
4. California Center for Judicial Education and Research Journal; Summer 1990, Volume 10, No. 2, page 96.
5. "Domestic Violence and the Courtroom: Understanding the Problem...Knowing the Victim"; American Judges Association; Authors: Dr. Lenore Walker; Hon. Richard Lee Price; Ms. Susan Rogers (1991).

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INTRODUCTION

Purpose and Scope of Manual

This manual is intended for criminal court judges and magistrates. It outlines the procedures for handling domestic violence cases and implementing the Family Protection and Domestic Violence Intervention Act of 1994, subsequent amendments, and various provisions of the federal Violence Against Women Act (VAWA) and the Gun Control Act. It is not intended as a "how to" guide for conducting trials or hearings. Some of the policies and procedures outlined are specific to Dutchess County, but the manual could easily be adapted to any county. The manual also has a section listing local and state resources for domestic violence victims. It is the hope of the authors that magistrates will use these resources to provide referrals for victims and batterers.

While criminal courts handle all domestic violence cases, regardless of the relationship between the parties, this manual addresses family offense domestic violence cases. It is, however, important to recognize that domestic violence occurs in relationships other than those of household and family members. The Dutchess County District Attorney's office uses the following broad definition of domestic violence: any offense between people who currently have or have had an intimate relationship. This includes family and household members as defined by statute (CPL §530.11(1), see page I-2, below), as well as individuals who are dating or who have previously dated (either heterosexual or same sex).

As we work toward a universal response system to domestic violence in Dutchess County, it is anticipated that use of this manual will help to create more uniformity in the procedures employed in the numerous city, town and village criminal courts.

Use of Manual

We suggest reading the manual in its entirety once to become familiar with its contents. The manual, however, is designed so that when on the bench, magistrates will be able to refer to an applicable section and have all the pertinent information at hand. Due to the fact that certain policies and procedures are used in numerous processes, some information is repeated in different sections.

The committee felt it was beneficial to have all the pertinent information to a situation in one section as opposed to having to refer to different sections. The most recent official forms, memoranda, and instructions are set out in the extensive appendices, which may be updated as changes are made.

Domestic Violence Forms for all courts are now available on the internet at:

www.courts.state.ny.us

There is also a chart on the inside front cover which sets forth the text of many of the relevant penal law sections, including the enumerated family offenses and the contempt statutes.

Throughout the manual, orders of protection are frequently discussed. A temporary order is referred to as a “temporary order of protection” or “TOP.” A final order of protection, which is colloquially referred to as a “permanent order of protection” is referred to in this manual as an “order of protection” or “OP.”

Also, in this manual the victim is referred to as the complainant in criminal matters and the petitioner in Family Court proceedings; the abuser is referred to as the defendant in criminal matters and the respondent in Family Court proceedings.

The Role of Magistrates

Local criminal court judges play a key role in the community's response to domestic violence. They have the power to set the tone of how domestic violence is perceived by victims, batterers, police, attorneys, and prosecutors. Where allegations of abuse have been proven, judges, through their actions, words, and decisions can protect victims, hold batterers accountable, and send a message that domestic violence is a serious offense that will not be tolerated.

"Judges are the ultimate legal authority in the criminal justice system. The investment in law enforcement services and victim support services is wasted if the Judiciary is not firm and supportive." (Source: *California Center for Judicial Education and Research Journal*, Summer 1990, Vol. 10, No. 2, page 96)

GOALS OF JUDICIAL INTERVENTION IN DOMESTIC VIOLENCE CASES

1. To stop the violence.
2. To protect the victim.
3. To protect the children and other family members.
4. To protect the general public.
5. To uphold the legislative intent that domestic violence be treated as a serious crime, and to communicate that intent to the defendant and to the victim.
6. To hold the offender accountable for the violent behavior and for stopping that behavior.
7. To rehabilitate the offender.
8. To provide restitution for the victim.

(Source: *California Center for Judicial Education and Research Journal*, Summer 1990, Vol. 10, No. 2).

Domestic Violence

Domestic violence is a pattern of COERCIVE behaviors that may include some or all of the following: physical abuse (i.e., battering and injury), psychological abuse, sexual assault, social isolation, deprivation, intimidation, and economic abuse. The goal of domestic violence is to establish and maintain power and control. The behaviors are perpetrated by someone who is or was involved in an intimate relationship with the victim. Domestic violence may include partner abuse, child abuse, elder abuse, abuse in gay or lesbian relationships, teen dating violence, and abuse between any family members. Although some victims are successful in escaping an abusive relationship after the first assault, most abuse is recurrent and escalates in both frequency and severity. A victim's access to food, clothing, money, friends, transportation, health care, social services, or employment may be restricted by the abuser. The abuser may harm children, other family members, friends, pets, personal belongings, and the family home.

Domestic violence describes serious criminal activity. Domestic violence knows no age, socio-economic, religious, racial, gender, or educational barriers. It is a myth that only the poor or uneducated are victims of abuse.

Children are adversely affected by witnessing domestic violence, seeing the aftermath -- an injured parent or destroyed home or property -- or just by living in a home infected with domestic violence.

Drugs and alcohol are often used as an excuse for violence, but are not the cause. Drug and alcohol abuse are distinct from battering, must be addressed separately, and may escalate the violence.

The cost to the community in lost lives and resources is a constant reminder that domestic violence is not a private family matter, but is a community problem demanding a community response.

Recognizing the Violence

A victim of abuse often has confused thoughts and feelings. As surprising as it may seem, many victims are uncertain as to whether they are being abused. They know that something is very wrong, but are unable to identify it properly. Denial, rationalization, and minimization are methods of coping day-to-day with the reality and severity of the abuse. The first step toward ending a violent relationship is to identify it as such. For many victims, identifying oneself as a victim of

battering is an extremely difficult step. To assist judges in identifying victims, the following Physical Abuse Indicators and Lethality Assessment may be helpful.

Physical Abuse Indicators

The following list is in the order of *less to more* severe abuse. Ongoing abuse escalates unpredictably, but more or less in this order, so that the presence of an action identified below is indicative of probable past abuse, even if there have been no serious physical injuries or prior police or court involvement. In addition, even if the abuse has not reached a certain level, the situation may still be dangerous or physically abusive.

It is crucial when using the Physical Abuse Indicators that the judge include the victim's opinion about the level of danger in order to properly assess a situation.

- verbal abuse, humiliation, isolation from family and friends
- throwing things, punching walls, hurting pets, not letting the victim leave, demanding sex
- slapping with open or back of hand, twisting arms, legs, and fingers
- kicking, biting, hair pulling, banging or shaking head
- choking, attempted strangulation, smothering
- forced sex
- beating up (pinned to the wall/floor, repeated kicks and punches)
- threatening with weapons, knives, guns, autos, poisons
- assault with a weapon

Lethality Assessment

Predicting lethality is difficult. However, research has suggested that there are certain factors that are important in assessing the lethality potential in a particular situation. The reported presence of some of the following factors can be used to assist judges in determining the level of protection necessary:

- stalking behavior
- increased violent episodes
- escalation of severity of violence
- intoxication and drug use
- forced or threatened sex acts

- suicide threats or attempts by batterer
- access to weapons
- psychiatric impairment of the victim or abuser
- proximity of victim and abuser
- current life stress of abuser
- previous criminal history
- defiance of court orders and judicial system
- presence of new relationship in victim's life
- abuser's need to control contact with children

Emotional Abuse

Although not legally actionable in family offense cases, emotional abuse may provide background information concerning the danger level of the situation. There are many forms of emotional abuse, including:

- insults
- rejection
- isolation
- emotional threats and/or accusations
- possessive and/or punitive behavior
- emotional blackmail
- financial blackmail
- unrealistic expectations
- threat of physical harm
- "crazy making" (distorting reality)
- use of or abuse of children to control victim's behavior

Blaming the Victim

A victim of domestic violence may act in ways that seem incomprehensible to people not aware of the dynamics of abuse. The victim may not understand his or her actions, denying the abuse in a desperate attempt for self-preservation.

The abuser's control of a victim may affect the simplest decision a victim may need to make.

Domestic violence is an offense by the perpetrator, not the victim. The victim cannot stop the abuse -- only the batterer can. The batterer must take full responsibility for his or her violent behavior.

Obstacles to Escape

1. Fear of:

- harm
- greater violence
- losing children
- inadequate system response
- not being believed
- unknown

2. Economic Pressures:

- lack of resources
- lack of possessions
- lack of child support
- lack of a home
- fear of losing job

3. Pressures to Stay:

- children
- religious and cultural beliefs
- stigmatization
- family pressures
- shame of a failed relationship
- love and hope

4. Lack of Information About:

- resources
- legal rights
- court system
- shelters

5. Lack of Safe and Effective Community Resources:

- limited shelter space
- limited affordable housing
- lack of affordable and safe day care
- limited support services

How Judges Can Help

- Listen to the victim
- Identify the abuse
- Enforce corrective steps
- Build trust with the victim
- Explain all the options
- Ask for specific details
- Promote "zero tolerance" of domestic violence

I. FAMILY OFFENSES

Magistrates are required to deal with different types of domestic violence cases. In addition to hearing criminal charges of domestic violence, they may sit as Family Court judges for the purpose of hearing an application for or a request for modification of a temporary order of protection (TOP) and arraigning a defendant in a "family offense" matter when the Family Court is not in session. The criminal courts and the Family Court have concurrent jurisdiction over "family offenses."

A. DEFINITION

A "family offense" is any alleged act that fits the Penal Law (PL) definition of certain enumerated offenses and occurs between spouses, former spouses, parent and child, or members of the same family or household. Family Court Act (FCA) §812(1); Criminal Procedure Law (CPL) §530.11(1). To determine whether the case before the court alleges a family offense, the court must determine whether one of the alleged acts fits at least one of the following Penal Law definitions: (A chart containing the text of each of these Penal Law sections is located on the inside front cover of this manual).

1. Disorderly Conduct, PL §240.20;¹
2. Harassment in the first degree, PL §240.25;
3. Harassment in the second degree, PL §240.26;
4. Aggravated Harassment in the second degree, PL §240.30 (telephone, written or electronic communication harassment);
5. Menacing in the second degree, PL §120.14;
6. Menacing in the third degree, PL §120.15;
7. Reckless Endangerment in the first and second degree, PL §§120.20; 120.25; (Although the statute does not specify the degree, both are included);
8. Assault in the second degree, PL §120.05;
9. Assault in the third degree, PL §120.00;
10. Attempted Assault in the second and third degree, PL §§110.00, 120.05, 120.00;
11. Stalking in the first, second, third, and fourth degree, PL §§120.60, 120.55, 120.50 and 120.45.

¹ For purposes of the Family Court Act, "disorderly conduct" includes disorderly conduct not in a public place (Family Court Act §812).

In addition, the alleged acts must have been between persons having one or more of the following relationships:

1. Spouses or former spouses (New York Law does not recognize common law marriages); or
2. Parent and child; or
3. Members of the same family or household, defined as follows:
 - a. Persons related by consanguinity or affinity (blood or marriage);
 - b. Persons legally married to one another;
 - c. Persons formerly married to one another;
 - d. Persons who have a child in common regardless of whether such persons have been married or have lived together at any time.

NOTE: If the offender is under the age of 16 the Family Court has exclusive jurisdiction in any of the above situations. FCA §812(1).

B. JURISDICTION

1. The local court and the Family Court have concurrent jurisdiction over family offenses. FCA §812 (1); CPL §100.07.

2. Jurisdiction of an original offense is determined by the geographical location in which the offense allegedly occurred. CPL §§20.50, 100.55.

3. Jurisdiction for a violation of an order of protection is in the court that issued the order or in the local criminal court where the violation occurred.

4. When the Family Court is not in session, local courts are legislatively mandated to assume jurisdiction and shall arraign anyone arrested for a family offense, an alleged violation of a Family Court TOP or OP, or for whom a Family Court arrest warrant has been issued. FCA §155(1). The local court may issue any order authorized under CPL §530.12 and may, with the consent of the victim, make such violation allegation or complaint returnable in the Family Court on the next day it is in session. CPL §530.11(2)(g).

See Section III for a more detailed discussion about determining Family Court/criminal court jurisdiction.

5. Venue: When a local judge is asked to issue or modify a Family Court order of protection, Family Court's venue applies: in Family Court, venue lies in the county where the act allegedly occurred or where the petitioner or any party resides, including a special care facility or a homeless shelter. FCA §818.

C. MANDATORY ARREST

Pursuant to CPL §140.10(4), an arrest shall be made when a police officer has probable cause to believe that:

1. A felony has been committed by one family or household member against another family or household member; or

2. There has been a violation of a stay-away provision of an OP of which the accused had knowledge; or

3. There has been commission of a family offense in violation of an OP of which the accused had knowledge; or

4. There has been commission of a misdemeanor family offense, unless the victim spontaneously requests that an arrest not be effected. The police shall **neither inquire** if the victim seeks an arrest **nor** threaten the arrest of any person for the purpose of discouraging requests for police intervention.

5. **Primary physical aggressor determination:** An exception has been made to the mandatory arrest law to give police officers the authority in misdemeanor situations to determine who is the most culpable party and make only the appropriate arrest. CPL 140.10(4)(c) provides that a police officer is not required to arrest every family or household member who may have been involved in a misdemeanor family offense. The officer must take into consideration the following factors to identify and arrest the **primary physical aggressor**:

(a) the comparative extent of any injuries;

(b) whether any person is threatening or has threatened future harm against another party;

(c) prior history of domestic violence that the officer can reasonably ascertain; and

(d) whether any person acted defensively to protect himself or herself from injury.

6. The officer is to evaluate each complaint separately and **not** base the decision to arrest or not on the willingness of a person to testify.

7. An officer is not required to arrest any person when the officer reasonably believes that the person's conduct is justifiable under Article 35 of the Penal Law ("Defense of Justification").

II. ADVICE AS TO RIGHTS OF VICTIMS AND ACCUSED

The court must give certain advice to both victims and accused. The following is a checklist:

A. NOTICE

Victims must be given a copy of the "notice of rights" previously given to them by police when the police arrived at the victims' home. CPL §530.11(6). (Appendix A).

B. RIGHT TO CHOOSE EITHER OR BOTH FAMILY AND CRIMINAL COURT

Although the police, probation officers, district attorneys, and other peace officers also have an obligation to notify the victim of the right to choose either or both Family and criminal court, the local court must also advise the complainant of these options at the first appearance. CPL §530.11(2)(a). The choices are as follows:

1. FAMILY COURT

- A Family Court proceeding is a civil proceeding for the purpose of stopping the violence and obtaining protection. FCA §812(2)(b). The Family Court may issue temporary orders of child support and custody. FCA §828(1)(b), 842(h). For many victims, the availability of child support and custody remedies is of critical importance and may be a reason for them to proceed in Family Court, whether or not a criminal case is ever prosecuted. If a victim expresses a need for child support or a custody order, the court should direct the victim to file petitions for these orders with the Dutchess County Probation Department (486-2510).
- Upon a finding of aggravating circumstances or other factors, the Family Court may issue a warrant for respondent's arrest. FCA §827(a)(vii).
- A Family Court proceeding can result in probation, suspended judgment, and/or restitution, in addition to an order of protection (OP).
- A violation of an OP can result in incarceration for civil contempt and/or criminal prosecution.

For victims with pending matrimonial cases, the Supreme Court has the authority to provide the same relief as is available under the Family Court Act. DRL §§240(3), 252.

NOTE: A victim's decision to proceed in Family Court does not divest a criminal court of jurisdiction over a family offense. CPL §530.11; FCA §812.

2. LOCAL CRIMINAL COURT

A criminal proceeding is for the purpose of prosecuting the accused and can result in a criminal conviction, incarceration, probation and/or fine, in addition to an order of protection. CPL §530.11(c).

3. BOTH FAMILY COURT AND CRIMINAL COURT

The victim may choose to proceed in both courts simultaneously. The victim may change forums at any time without adverse consequences. FCA §115(e); CPL §100.07.

NOTE: Constitutional double jeopardy principles may limit the victim's ability to receive relief in both courts in contempt proceedings.

C. RIGHT TO COUNSEL FOR VICTIMS AND ACCUSED

1. Petitioners and respondents in Family Court proceedings must be advised that they have a right to counsel in Family Court and, if indigent, a right to appointed counsel. FCA §262(a)(ii); CPL §530.11(6); County Law Art. 18-B. All family offenses are included in the right to counsel statutes. County Law Art. 18-B, 722-a.
2. Defendants in criminal proceedings must be advised that they have a right to counsel and, if indigent, a right to a public defender or, in conflict of interest cases, appointed counsel. County Law Art. 18-B, §722. As a complaining witness in a criminal proceeding, the victim will consult with the Assistant District Attorney prosecuting the case.

III. DETERMINATION OF WHETHER THE LOCAL JUDGE IS EXERCISING FAMILY COURT OR CRIMINAL COURT JURISDICTION, OR BOTH

As a magistrate, the first issue to determine in any domestic violence situation is whether the court is being asked to hear the case as a criminal court matter, a Family Court matter, or both. The following questions will assist the court in making that determination.

IS THE CASE A FAMILY OFFENSE? Do the parties meet the relationship definition **and**, is the offense charged a designated Penal Law family offense? See, Section I.

WHAT FORUM HAS THE VICTIM ELECTED? If the case is a family offense, the court **must** inform the complainant that the law permits a choice of forum by the complainant. The defendant has no right to participate in this decision or to influence its outcome nor may the court, police officer, or other official make this decision for the victim.

Note: A victim's decision to proceed in Family Court does not divest a criminal court of jurisdiction over a family offense. CPL §530.11; FCA §812.

OPTIONS SELECTED BY COMPLAINANT

1. Continue in Criminal Court:
(See, Section IX, Criminal Court Procedures)
2. Proceed in Family Court:
(see below)
3. Proceed in both courts simultaneously: The court must arraign the defendant in Criminal Court (Section IX) and also complete Family Offense Cover Sheet and fax or deliver required papers to Family Court (See, Section VII).

IF THE VICTIM ELECTS TO PROCEED IN FAMILY COURT, IS THE FAMILY COURT NOW IN SESSION?

1. **If yes**, victim must be referred directly to Family Court. When Family Court is in session, the local town or village court has criminal court jurisdiction only.
2. **If no**, (i.e., it is between 5:00 P.M. and 9:00 A.M., or it is a holiday or weekend), the magistrate has the authority to issue a Family Court temporary order of protection (See, Section

VIII) or, with the consent of the complainant, modify a temporary order of protection issued by the Family Court. The magistrate also has the authority to arraign a defendant on a new offense, a violation of a Family Court or Supreme Court order of protection or a Family Court or Supreme Court warrant. FCA §155; DRL §§ 240, 252. (See, Section VIII).

IV. LOCAL COURTS' AUTHORITY TO ISSUE AND MODIFY TEMPORARY AND FINAL ORDERS OF PROTECTION AND PERSONS ELIGIBLE

A. TEMPORARY ORDER OF PROTECTION

The court may issue a TOP in the following cases:

1. **Under the Family Court Act:** For good cause shown, upon the request of the petitioner when Family Court is not in session and the petitioner has submitted a sworn affidavit in support of issuance of a Family Court order of protection. FCA §§154-d(1), 821(2); CPL §530.12(3-a). See Sections VII and VIII, below, for the procedures to be followed. Affidavit form is attached as Appendix J.
2. **Under the Criminal Procedure Law:** For good cause shown, on behalf of the complainant, whenever a criminal action is pending involving a complaint charging a family offense. CPL §530.12.
3. **Under the Criminal Procedure Law:** For a victim or witness in any criminal action. CPL §530.13(1) .

B. AUTHORITY TO MODIFY A FAMILY COURT ORDER OF PROTECTION

Local judges have the authority to modify a Family Court TOP or OP on an *ex parte* basis when the Family Court is not in session upon the request of the petitioner, provided the petitioner submits a sworn affidavit in the form set out in Appendix K. FCA §154-d(2); CPL §530.12(3-b). If the court does modify the Family Court order of protection, the local criminal court is to immediately forward a copy of the modified order to the Family Court that issued the original order. See Sections VII and VIII below for procedures to follow when the local court modifies a Family Court order of protection.

NOTE: The local court has no authority to modify an order of protection issued by the Supreme Court pursuant to a matrimonial action. However, new allegations may be the basis for issuing a temporary Family Court or criminal court order of protection.

C. AUTHORITY TO ISSUE A FINAL ORDER OF PROTECTION

Local judges may issue an order of protection for the victim and the victim's family or household or any witness designated by the court upon conviction of a defendant for any crime or violation between spouses, parent and child, or members of the same household. CPL §530.12(5). They may also issue an order of protection for a witness designated by the court or the victim and

members of the victim's family or household upon conviction for any offense. CPL §530.13(4). They have no authority to issue a Family Court final order of protection.

D. PERSONS ELIGIBLE FOR A FAMILY COURT TOP (FCA §812(1))

Petitioners in family offense proceedings must be spouses, former spouses, parent/child, or members of the same household as the defendant. "Members of the same family or household" are defined to include:

1. Persons related by consanguinity or affinity (blood or marriage);
2. Persons legally married to one another;
3. Persons formerly married to one another;
4. Persons who have a child in common, whether such persons have lived together at any time.

E. PERSONS ELIGIBLE FOR CRIMINAL ORDERS OF PROTECTION (CPL §§530.12; 530.13)

1. Any victim of a criminal offense (family and non-family);
2. A designated witness;
3. Members of a crime victim's family or household. Eligible members of the family or household are defined the same as above (CPL § 530.11(1)) to include:
 - a. Persons related by consanguinity or affinity;
 - b. Persons legally married to one another;
 - c. Persons formerly married to one another;
 - d. Persons who have a child in common, whether such persons have lived together at any time.
4. These orders may be issued as a condition of pre-trial release, bail, an adjournment in contemplation of dismissal, conditional discharge, an adjournment, or as part of the sentence. CPL §530.12, §530.13.

V. FIREARMS

1. All orders of protection may contain conditions with respect to firearms. As outlined below, if particular information is provided to the court, the order is required to contain conditions with respect to firearms.

2. When entertaining an application for a TOP or OP the court should inquire as to whether the defendant/respondent has access to weapons and whether there is a risk of firearm injury to the victim. In any such situation, a "Gun Surrender" condition should be included in the temporary and final orders of protection. A Gun Surrender Condition is included on the official order of protection forms (See Appendices B, C, and F):

GUN SURRENDER CONDITION

DEFENDANT SHALL SURRENDER ANY AND ALL HANDGUNS, PISTOLS, REVOLVERS, RIFLES, SHOTGUNS AND OTHER FIREARMS OWNED OR POSSESSED, INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING: [List Known Weapons] TO THE [Defendant's Village, Town or City Police Department or Sheriff's Department/state Police, If There Is No Local Police Department]. SUCH SURRENDER SHALL TAKE PLACE IMMEDIATELY, BUT NO LATER THAN: [Specify Date and Time].

- **A list of registered handguns can be obtained by calling the Dutchess County Sheriff's Office at (845) 486-3800.**
- **Optional language (with consent of district attorney):**

DEFENDANTS WHO COMPLY WITH THIS ORDER WITHIN 24 HOURS WILL BE IMMUNIZED FROM PROSECUTION FOR ILLEGAL POSSESSION, NOT USE, OF SUCH GUNS, FIREARMS, PISTOLS, RIFLES, AND AMMUNITION.

NOTE: CPL §530.14(5)(b) and PL §265.20(a)(1)(f) provide immunity for surrender from prosecution for illegal possession and the inclusion of an "immunity" provision may increase the likelihood of compliance and cooperation in enduring the defendant's/respondent's surrender of illegal weapons.

3. The local court should make arrangements with the local police department, Sheriff's Department or state police for the surrender and storage of firearms.

4. **Suspension and Revocation of Firearm License; License Ineligibility** (FCA §842-a; CPL §530.140)

A. Mandatory: Whenever an order of protection is issued in family and non-family

offense cases, the court **MUST**:

1. Order **suspension** of the defendant's firearm license (in the case of a TOP);
2. Order **revocation** of the defendant's firearm license (in the case of a OP);
3. Order the defendant **ineligible** for a firearm license (in either TOP or OP); **AND**
4. Order the surrender of all firearms possessed by the defendant where the court

has good cause to believe that:

- a. The defendant was previously convicted of a violent felony offense (PL§70.02(1)), or
- b. The defendant willfully violated a prior order of protection and the

violation involved:

- (i) the infliction of serious physical injury (PL §10.00(10)); or
- (ii) the use or threatened use of a deadly weapon (PL §§10(12),(13)), or
- (iii) any violent felony offense (PL §70.02(1)); or
- (iv) stalking in the first, second, third and fourth degree (PL §§120.60, 120.55, 120.50, 120.45).

B. Permissive: The court **MAY** order the above when there is a "substantial risk" that the defendant may use or threaten to use a firearm unlawfully against the victim.

5. Where license suspension/ revocation is discretionary or mandatory and the court is uncertain as to whether the defendant has a license, the court should order suspension/revocation and leave it to law enforcement to determine whether the defendant has a firearm license.

6. As noted in Gun Surrender Condition above, the surrender must be ordered on a specific date and time and shall specify the place where the firearms shall be surrendered.

7. The law enforcement agency must notify the court that the surrender has taken place.

8. Such surrenders are considered "voluntary" for purposes of the exemptions from prosecution enumerated in PL §265.20(a)(1)(f).

9. **Hearing:** The defendant has a right to a hearing to "challenge" the order revoking the firearm license. The court must commence a hearing within 14 days of the issuance of the order. The right to challenge the order **does not** prevent the court from issuing the order prior to a hearing. The law is silent as to the burden of proof or procedure to be followed at such a hearing.

10. Notice to central registry and NY State police:

a. The Family Protection Registry Center must be notified of any license suspension/revocation, license ineligibility and surrender orders in family offense cases. This notice is automatic since it is part of the order registered. (See, Section VI)

b. The New York State Police and local law enforcement agencies must be notified of any suspension, revocation and licenses ineligibility orders, including those in criminal, non-family offenses. Local police must also be notified of all surrender orders. CPL §530.14(6).

c. NYS Police Notification: Transmittal of criminal and Family Court **family offense and non-family offense (domestic violence crimes)** orders of protection to the registry will **automatically** satisfy the notice requirement for the State Police. However, notice in other **non-family** offense cases, which are not included in the registry, must be sent separately to:

New York State Police, Pistol Permit Section, State Office Building Campus,
Building 22, 1220 Washington Avenue, Albany, New York 12226-2252.

11. When an order of revocation, suspension, or ineligibility is modified or vacated, the court shall notify the registry, local police, and NY State police. CPL §530.14(6) (NYS Police notification is automatic through central registry; in non-family offense, non-domestic violence cases, written notification must be sent to Albany at the above address).

12. Firearms so surrendered must be retained by law enforcement for a period of one year (unless OP is in effect longer) and then, if the owner is properly licensed, either returned to the owner or transferred to a dealer for sale. (PL §400.05(6)).

13. Applicability to police and peace officers: Although these provisions include firearms licensed under Penal Law Article 400, which does not include peace officers and police officers, the statute states that it shall not be deemed to limit, restrict, or otherwise impair the authority of the court to order the surrender of any and all pistols, other firearms, etc. by the defendant. CPL §530.14(5)(c); FCA §842-a(5)(c). Thus, surrender orders may be issued against police and peace officers; license revocation, suspension, and ineligibility orders may not be issued for service revolvers used on the job.

Provisions under the Federal Gun Control Act place further restrictions on the ability of law enforcement officers to carry weapons where orders of protection are in effect. There is a limited law enforcement exception to this rule. However, if the order of protection has been issued after conviction for certain crimes this exception would not apply. [See Section XII on Federal Domestic

Violence Laws for a more detailed discussion of this].

14. **Federal Law:** Magistrates should also advise defendants that federal law criminalizes the receipt, possession, purchase or transfer of a handgun, rifle, shotgun or other firearm or ammunition (that has been shipped or transported in interstate commerce) by a person who is subject to an order of protection (except for military or law enforcement officers while on duty) that includes certain conditions. 18 USC § 922. Those conditions, which are set forth in 18 USC § 922 (g), are:

(a) OP was issued after a hearing at which person received notice, and had an opportunity to participate;

(b) OP restrains person from harassing, stalking, or threatening an intimate partner or child of an intimate partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(c) (i) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or

(ii) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury.

NOTE: Unless issued *ex parte*, a New York OP falls within the parameters of this law. A limited law enforcement exception exists under this law permitting law enforcement to use their weapons while on duty. In cases involving law enforcement the individual's department should be immediately notified so that appropriate measures will be taken (e.g., reassignment of the officer to desk duty or lockup of firearm at the end of a shift). Even if surrender and/or revocation would be discretionary under state law, federal law will in most cases prohibit possession of a firearm while subject to an order of protection. Federal law requires simply that defendants have knowledge that they possess firearms, not knowledge that the possession is unlawful. Therefore, defendants/respondents may be subject to federal prosecution even where they have not been advised of this law. The written notice that possession of any firearm, including long guns and rifles, while subject to an OP, is illegal under federal law is set forth on the order of protection forms. (See Section XII for information on additional Federal gun control laws for domestic violence cases; see Appendices B & C).

VI. FAMILY PROTECTION REGISTRY CENTER

The Family Protection and Domestic Violence Intervention Act of 1994 established a computerized Central Registry for Family Offense Orders of Protection and warrants. The Registry became operational on October 1, 1995. Whenever a court issues, modifies, vacates, serves or is notified of service of a temporary or final order of protection in a case charging **any** offense between spouses, former spouses, parent and child or members of the same household (CPL §§530.11, 530.12), the court must forward a copy of the order of protection and the Information Sheet, or Addendum to the Information Sheet, to the Central Registry (Executive Law §221-a).

Effective November 20, 2002, all non-family offense orders of protection issued pursuant to CPL §530.13, must also be entered into the Registry **if** they involve victims of domestic violence as defined broadly in the Social Services Law (section 459-a) and the regulations of the NYS Office of Children and Family Services (18 NYCRR §452.2(g)). In addition to the categories covered by the family offense provisions of CPL §530.12, this now includes: unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household and unrelated persons who have had intimate or continuous social contact with one another and who have access to one another's household. Thus, most orders of protection, temporary and final, issued pursuant to CPL §530.13, except for witness intimidation or neighbor harassment type situations, must be entered into the DV Registry.

Firearm Suspension and Revocation -- Central Registry must also be notified of any firearm license suspension, revocation, license ineligibility, and surrender orders in family offense cases. This notice is automatic since such provision is part of the order registered.

Forms -- It must be emphasized that the official forms must be used exclusively. The computer registry cannot accept orders issued on forms other than the official forms. The official forms are set forth in the Appendix and are also available on the internet at: **www.courts.state.ny.us** (see Appendix B -- Criminal Form 1 -- Criminal Court Order of Protection, Family Offenses and Other Domestic Violence Crimes; Appendix F -- Family Court Temporary Order of Protection).

Youthful Offender Cases -- Orders of protection and related warrants issued in criminal proceedings in which "youthful offender" status has been granted are to be included on the statewide registry. Information regarding such orders and warrants may be retained on the registry so long as the order remains in effect or the warrant remains outstanding. The information may be disclosed only for the purpose of adjudicating or enforcing such order of protection. CPL §720.35(2).

Out-of-State Orders may also be included in the central registry. Any Court can forward out-of-state Orders to the Registry. Victims need to complete the Family Protection Registry Information Sheet and complete an affidavit that the Order has not been modified or expired (Appendix L). The Information Sheet should be marked “OUT OF STATE ORDER” and the order should be issued an order number and docket number from the Court registering the order.

Central Registry FAX #: 1-800-266-7924.

Central Registry Phone #: 1-800-266-9511.

(Detailed procedures for communicating with the Registry are outlined in Appendix D).

VII. TRANSMITTAL OF CASE TO FAMILY COURT (Family Court fax: (845) 486-2510)

A. When the victim has elected to proceed in Family Court, either exclusively or simultaneously with a criminal court proceeding, complete the Family Offense Cover Sheet (Appendix E) and deliver or fax it with the following papers (as applicable) to the Family Court by 9:00 A.M. the next day that court is in session, or as soon thereafter as is practicable, to ensure arrival in Family Court before the return date:

- accusatory instrument or affidavit (see Appendices J and K);
- temporary order of protection;
- modified family court order of protection;
- arraignment sheet;
- bail receipt;
- vacated warrant;
- commitment order;
- process server information sheet;
- Family Protection Registry Center information sheet.

NOTE: 1. Where the victim elects to proceed in Family Court, the matter shall be made returnable in Family Court on the next day that the court is in session, or as soon thereafter as is practicable, **but in no event more than four days after issuance of a TOP or a modified TOP or OP.**

2. Advise the victim and the defendant/respondent when to appear in the Family Court, at 50 Market Street, Poughkeepsie, New York.

3. Have the court clerk **fax** copies of all of the appropriate documents to the Family Court before 9:00 A.M. the next morning, in order to alert the court that petitioner and respondent are scheduled to appear. However, since the magistrate will be arraigning the alleged violator only after Family Court hours and on weekends, the local court clerk may not be available, and the **magistrate may have to direct the police to deliver the papers to Family Court.**

4. If the TOP and affidavit in support are faxed to Family Court, the originals shall be forwarded immediately thereafter.

5. If the defendant/respondent is arrested and is in custody, he/she must be brought before the Family Court at 9:00 A.M. on the next day Family Court is in session.

B. Using the Family Court Process Server; Transmittal of Criminal Court TOP to

Family Court for service on defendant:

In Dutchess County, Family Court has a process server available to serve temporary orders of protection, including those issued by the criminal court (See Appendix H for complete instructions). If the defendant is **not** present in court and the local criminal court wishes to have the TOP served by the Family Court process server, the victim must complete the Process Server Information Sheet (Appendix I). This is extremely important, since failure to provide this information may cause a delay in having the TOP served. The court must complete Section A of the Family Offense Cover Sheet (Appendix E) and fax or deliver the following documents to the Family Court (**FAX NUMBER: (845) 486-2510**):

- TOP
- Family Offense Cover Sheet (Appendix E)
- Process Server Information Sheet (Appendix I)

The Family Court process server may not be used in any case where the TOP directs seizure of firearms, removal of the defendant from a residence, or otherwise requires police intervention. In these situations the TOP must be given to the police for service. In jurisdictions where the NYS Police is the responding agency, the TOP must be given to the Sheriff's office for service. Any questions about this procedure should be addressed to the Chief Clerk of the Family Court (845 486-2500).

FAMILY PROTECTION REGISTRY CENTER REMINDER

It is the responsibility of the issuing court to transmit to the family protection registry center a copy of any order of protection issued with all required information (see section VI and Appendix D, Instruction for the Registry). If the victim was not present when the order was issued it is the responsibility of the police officer or assistant district attorney to provide the court with a completed registry information sheet.

VIII. RESPONSIBILITIES AND PROCEDURES WHEN FAMILY COURT IS NOT IN SESSION

A. Arraignment of an Adult for a Family Offense (No Warrant or Order of Protection Has Been Issued)

1. When Family Court is not in session and an adult is arrested for a family offense, arraignment is before the "most accessible magistrate." FCA §155.

2. If the victim is present at this first appearance, the magistrate is to advise the victim of the right to proceed in Family Court or criminal court, or both simultaneously. CPL §530.11(2) (h), (2-a). The court is to provide the victim with a "Notice of Rights" (Appendix A).

NOTE: A victim's decision to proceed in Family Court does not divest a criminal court of jurisdiction over a family offense. CPL §530.11; FCA §812.

3. Right to Counsel: The parties must also be advised that they have a right to counsel in Family Court and, if indigent, a right to appointed counsel. FCA §262(a)(ii); CPL §530.11(6); County Law Art. 18-B. All family offenses are included in the right to counsel statutes. County Law Art. 18-B, §722-a.

4. The magistrate shall permit the complainant to file an information, accusatory instrument, or sworn affidavit.² FCA §155(2). The magistrate shall thereupon commit such respondent/defendant to the custody of the sheriff, admit to, fix or accept bail, or ROR him or her for a hearing before the Family Court and/or criminal court. FCA §155(2).

5. Where petitioner requests that the matter proceed in Family Court³ and has completed the sworn affidavit, the magistrate, in addition to the arraignment responsibilities under the Criminal Procedure Law, has emergency powers to issue a Family Court TOP "for good cause shown." FCA §§ 154-d, 821(2); CPL §530.12(3-a).

6. The local court must inquire as to the existence of any other orders of protection between the parties. CPL §530.12(6-a). To comply with this statutory requirement, every court must have

² The affidavit, attached in Appendix J, must allege that: (i) Family Court is not in session; (ii) that a family offense has been committed; (iii) that a family offenses petition has been or will be filed in Family Court the next day the court is in session; and (iv) good cause has been shown for issuance of a TOP. The victim will later be assisted in completing a family offense petition by the Probation Department, Family Court Intake Unit, which handles these cases on an emergency basis **during regular business hours. (Probation Department Intake Unit: 486-2650).**

³ Although the petitioner may not be present at the arraignment, he or she may have informed the arresting officer(s) of his or her request to proceed in Family Court and completed the required affidavit. The police officer(s) should then inform the arraigning judge of this request. However, law enforcement may elect to also proceed criminally.

a protocol in place for automatically checking the domestic violence registry on a routine basis before issuing orders of protection. (See memorandum from Judge Traficanti, dated August 6, 2002, Appendix D, pp. 5-8).

7. Where petitioner has requested that the matter be returnable in Family Court, upon issuance of a TOP, the local court shall transfer the matter, forthwith, to the Family Court, (See Section VII, Transmittal of Case to Family Court) and shall make it returnable on the next day that the Family Court is in session, or as soon thereafter as practicable, but **in no event more than four calendar days after issuance of the TOP.** FCA §154-d(1).

8. The Family Court TOP form should be used by the local criminal court when issuing or modifying a Family Court Order (Appendix F). **The petitioner need not be present for the magistrate to issue a TOP.**

a. The TOP may contain any of the provisions authorized for an OP under FCA §828(1) and §842 (see Appendix F).

b. The local court must make a determination in writing (if no stenographer is present to make a record) of whether to impose conditions, and whether these conditions will achieve their purpose. Among the factors the local judge should consider are prior orders of protection, prior incidents of abuse, past or present injury, threats, drug or alcohol abuse, and access to weapons. FCA §828(1). **(See Section V, Firearms).**

c. The TOP must plainly state the date upon which it expires. FCA §154-c. If the matter is returnable in Family Court, the TOP shall not be valid for more than 4 calendar days after issuance, unless the victim files a petition in Family Court on or before the return date and the Family Court issues a TOP. FCA §154-d.

d. The petitioner, if present, must be given a copy of the TOP and in a case where a Family Court petition has not been filed, must be advised that the TOP will expire in four calendar days, unless the petitioner files a petition in Family Court on or before the return date and that Family Court issues a TOP.

e. If the petitioner is not present, the court should arrange to provide her or him with a copy of the TOP and notification of the Family Court return date.

f. A copy of the TOP must be filed with the law enforcement agency where the complaint originated and, if the agency is not open 24 hours a day, it must be filed with a police department that is open.

- g. It is the responsibility of the issuing court to transmit the TOP to the Family Protection Registry Center (See, Section VI).
- h. The magistrate should have the respondent acknowledge service of the TOP by signing it. Copies should then be given to the respondent and the police, noting on the police copy that respondent has been personally served in court.
- i. The court is to complete the Family Offense Cover Sheet and deliver or fax it, with all required documents, to the appropriate Family Court by 9:00 A.M. of the next Family Court session, or as soon thereafter as is practicable, to ensure arrival of the papers before the return date. If the TOP and affidavit are transmitted by fax, the originals must be sent to the Family Court immediately thereafter. (See, Section VII, Transmittal of Case to Family Court, and Family Offense Cover Sheet, Appendix E).
- j. The local court should advise the petitioner and respondent of the return date in Family Court.

B. Arraignment for Violation of a Family Court Order of Protection

1. When the Family Court is not in session, an adult arrested for an alleged violation of an outstanding Family Court TOP or OP shall forthwith be brought before a local criminal court in the county of arrest for arraignment. FCA §155(1); CPL §530.11(4).

2. A copy of the order of protection **or a record of such order from the statewide computer registry** shall be evidence of the filing of an information, petition, or sworn affidavit. FCA §155(1).

3. At this first appearance, the magistrate must advise the complainant, if present, of the options to proceed in Family Court or local criminal court, or both simultaneously. CPL §530.11(2-a).

NOTE: A victim's decision to proceed in Family Court does not divest a criminal court of jurisdiction over a family offense. CPL §530.11; FCA §812. However, constitutional double jeopardy principles may limit the victim's ability to receive relief in both courts in contempt proceedings.

4. The magistrate must also advise the parties that they have a right to counsel in Family Court, and, if indigent, a right to appointed counsel. FCA §262(a)(ii); CPL §530.11(6); County Law Art. 18-B. All family offenses are included in the right to counsel statutes. County Law Art. 18-B, §722-a.

5. Options for the **victim** when there is an alleged violation of a Family Court TOP or OP:
 - a. Treat the violation as a new offense and have the matter referred to Family Court. FCA §847;
 - b. File a petition alleging a violation of the Family Court TOP or OP and have the matter referred to Family Court. FCA §847;
 - c. File an affidavit asking the court to modify a TOP or OP to add and/or change the conditions. FCA §821(2); CPL §530.12(3-b); See, Appendix K.
 - d. File an accusatory instrument based on the new incident and/or criminal contempt (PL§§ 215.50; 215.51) and proceed in local criminal court. FCA §847.
6. Options for the local court (See, CPL §530.11(4)):
 - a. Commit the defendant to the custody of the sheriff;
 - b. Fix and accept bail. FCA §155(1);
 - c. ROR the defendant for a hearing before the next session of the Family Court and/or local criminal court. FCA §155(1);
 - d. Issue any order authorized under CPL §530.12(11), after a hearing;
 - e. Issue a criminal court TOP, if appropriate and if an accusatory instrument has been filed, and schedule further criminal court proceedings. CPL §530.12(1);
 - f. Modify a Family Court TOP or OP, at the request of the petitioner, upon the filing of an affidavit requesting modification. FCA §§ 154-d(2); 821(2); CPL §530.12(3-b). See, Section E, below, Emergency Powers to Modify a Family Court TOP or OP.

7. Unless the victim requests otherwise, in addition to scheduling further criminal proceedings, if any, the court shall make such matter returnable in Family Court, on the next day such court is in session. CPL §530.11(4). The court is to complete the Family Offense Cover Sheet, deliver or fax it with all relevant documents to the Family Court by 9 A.M. of the next day Family Court is in session, or as soon thereafter as is practicable, to ensure receipt prior to the return date. (See, Section VII, Transmittal of Case to Family Court, and Family Court Cover Sheet, Appendix E). Advise the parties of when to appear in Family Court.

C. Arraignment on a Family Court Warrant

1. An adult arrested pursuant to a Family Court warrant shall forthwith be taken to the most accessible magistrate and arraigned. Family Court Act §155(1).

2. The production of the warrant, certificate of warrant, or **record of such warrant from the statewide computer registry** is evidence of a previously filed petition. The warrant is based on a previously filed petition and is deemed to be sufficient evidence that there is a properly filed petition. There is no need for the victim to execute an additional petition or accusatory instrument. FCA §155(1).

3. Upon consideration of the bail recommendation, if any, made by the Family Court and indicated on the warrant (Appendix G), the magistrate shall thereupon commit such respondent to the custody of the sheriff, fix or accept bail, or ROR the respondent for a hearing before the Family Court. FCA §155(1).

4. **It should be noted that the Family Court judge's bail recommendation is based on the court's knowledge of the entire family history, including any prior proceedings.**

5. The original warrant, if available, must be returned to Family Court.

6. A person arrested on a Family Court warrant may be released by the "desk officer in charge at a police station" upon the payment of cash bail for his or her appearance before the appropriate court the next morning. FCA §155-a.

D. Victim Seeks an *Ex Parte* Family Court Temporary Order of Protection upon the filing of an accusatory instrument or sworn affidavit and Family Court is not in session

1. The local criminal court has emergency powers, upon the request of a petitioner, to issue an *ex parte* temporary order of protection, pending a hearing in Family Court, provided that a sworn affidavit is submitted that alleges that:

- a. the Family Court is not in session;
- b. a family offense has been committed;
- c. a family offense petition has been filed or will be filed in Family Court on the next day the court is in session; and
- d. showing good cause.

FCA §154-d(1); CPL 530.12(3-a). See, Appendix J.

2. When the victim appears before the local magistrate based upon a family offense when Family Court is not in session, and seeks an *ex parte* Family Court order of protection:

- a. The magistrate is to advise the victim of the right to proceed in Family Court or, upon the filing of an accusatory instrument, criminal court, or both simultaneously and provide

the victim with a “Notice of Rights”. CPL §§530.11(2)(h), (2-a); Appendix A.

NOTE: A victim’s decision to proceed in Family Court does not divest a criminal court of jurisdiction over a family offense. CPL §530.11; FCA §812.

b. The magistrate is to advise the victim of the right to counsel in Family Court, and, if indigent, the right to appointed counsel. FCA §262(a)(ii); CPL §530.11(6); County Law Art. 18-B. All family offenses are included in the right to counsel statutes. County Law Art. 18-B, 722-a.

c. An arrest need not precede issuance of the TOP as long as an affidavit or accusatory instrument has been filed.

d. The police **or** district attorney can request a TOP on behalf of the complainant.

The complainant need not be present for the magistrate to issue a TOP.

e. The local court must inquire as to the existence of any other orders of protection between the parties. (CPL 530.12(6-a)). To comply with this statutory requirement, every court must have a protocol in place for automatically checking the domestic violence registry on a routine basis before issuing orders of protection. (See memorandum from Judge Traficanti, dated August 6, 2002, Appendix D, pp. 5-8).

f. The TOP may contain any of the provisions authorized for an OP under FCA §§828(1) and 842, and must be on the official form. (See, Appendix F).

g. The local court must make a determination in writing (if no stenographer is present to make a record) of whether to impose conditions, and whether these conditions will achieve their purpose. Among the factors the local judge should consider are prior orders of protection, prior incidents of abuse, past or present injury, threats, drug or alcohol abuse, and access to weapons. FCA §828(1). (**See Section V, Firearms**).

h. Where petitioner has requested that the matter be returnable in Family Court, upon issuance of a TOP, the local court shall transfer the matter, forthwith, to the Family Court, (See Section VII, Transmittal of Case to Family Court) and shall make it returnable on the next day that the Family Court is in session, or as soon thereafter as practicable, but **in no event more than four calendar days after issuance of the TOP**. FCA §154-d(1).

i. The TOP must plainly state the date upon which it expires. FCA §154-d. If the

matter is returnable in Family Court, the TOP shall not be valid for more than 4 calendar days after issuance, unless the victim files a petition in Family Court on or before the return date and the Family Court issues a TOP.

j. The petitioner, if present, must be given a copy of the TOP and must be advised that the TOP will expire in four calendar days, unless the petitioner files a petition in Family Court on or before the return date and that Family Court issues a TOP. The petitioner is to be referred to Family Court for appearance on the return date.

k. If the petitioner is not present, the court should arrange to provide her or him with a copy of the TOP and notification of the Family Court return date.

l. A copy of the TOP must be filed with the law enforcement agency where the complaint originated and, if the agency is not open 24 hours a day, it must be filed with a police department that is so open.

m. It is the responsibility of the issuing court to transmit the TOP to the Family Protection Registry Center. (See, Section VI).

n. The Family Offense Cover Sheet is to be completed (Appendix E) and must be delivered or faxed, with the TOP and all required attachments, to the appropriate Family Court to ensure arrival of the papers before the return date. If the TOP and Affidavit are transmitted by fax, the originals must be sent to the Family Court immediately thereafter. (See Section VII, Transmittal of Case to Family Court, and Family Offense Cover Sheet, Appendix E).

E. Emergency powers to modify a Family Court TOP or OP at request of victim

1. The local criminal court may on an *ex parte* basis modify a Family Court OP or TOP, provided that the petitioner has submitted a sworn affidavit (Appendix K) alleging that: (i) the Family Court is not in session and (ii) showing good cause, including a showing that the existing order is insufficient for the protection of the victim, the victim's child or children, or other members of the victims family or household. FCA §154-d(2); CPL §530.12(3-b).

2. The matter regarding modification shall be made returnable in Family Court on the next day the Family Court is in session, or as soon thereafter as is practicable, **but in no event more than four calendar days after issuance of the modified order.**

3. The court shall immediately forward the modified order and sworn affidavit to the

Family Court, in a manner to ensure arrival before the return date. If the modified order and affidavit are transmitted by fax, the originals must be sent to the Family Court immediately thereafter. (See, Section VII, Transmittal of Case to Family Court).

4. The petitioner shall be given a copy of the modified order and the affidavit.

5. A copy of the modified order shall be served on the respondent and filed with the law enforcement agency where the complaint originated and, if the agency is not open 24 hours a day, it must be filed also with a police department that is open.

6. Except as provided above, any application to vacate or modify a TOP or OP shall be on notice to the non-moving party. CPL §530.12(15).

NOTE: If the court modifies a TOP or OP, the court must issue a new order, not make changes on the existing one.

F. Service of the Family Court TOP

When the respondent is not present in court, any TOP that requires removal of the respondent from the victim's home or removal of firearms or otherwise requires police intervention, should be given to the police for service. In jurisdictions where the NYS Police is the responding agency, the TOP must be given to the Sheriff's office for service. Otherwise the TOP may be delivered or faxed to Family Court for service by a private process server. (See, Section VII, Transmittal of Case to Family Court, Appendices H and I).

NOTE: Family Court Fax Number: (845) 486-2510.

NOTE: If the TOP is issued on a weekend it is preferable to have the police serve it, because the Family Court process server will not receive it until Monday morning.

IX. CRIMINAL COURT PROCEDURES

While the focus of this section is on family offenses, reference is also made, where appropriate, to the procedures for non-family offenses. CPL §530.12 sets forth the procedures to be followed for issuing orders of protection for victims of family offenses and CPL §530.13 sets forth the procedures for victims of crimes other than family offenses.

NOTE: Effective November 20, 2002, all non-family offense orders of protection issued pursuant to CPL §530.13, must also be entered into the Registry **if** they involve victims of domestic violence who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household and unrelated persons who have had intimate or continuous social contact with one another and who have access to one another's household Sec Section VI.

A. Arraignment Procedure -- Defendant Arrested

NOTE: **Local police policies and procedures do not allow for appearance tickets to be issued following an on-scene arrest in domestic violence cases. If the judge in the town or village where the crime was allegedly committed is not available, a judge in an adjoining municipality is required to arraign the defendant.**

1. Provide the defendant with a copy of the charges.
2. Advise the defendant of the charges. Read the Accusatory Instrument(s) in its entirety unless an attorney representing the defendant is present and expressly waives a reading of the charges.
3. Advise the defendant of his or her rights. Where the offense(s) charged do not include a felony, see CPL §170.10 (3) and (4). Where the offense(s) charged include a felony, see CPL §180.10 (3) and (4).
4. Whenever a family offense is charged, the accusatory instrument must contain the following information in the upper right hand corner:

FO

Defendant: _____
(relationship to alleged victim)

Alleged victim: _____
(relationship to defendant)

If this information is not present, Part 134 of the Rules of the Chief Administrator of the Courts requires the court to insert the information.

5. Issuance of Temporary Orders of Protection

a. The court must inquire as to the existence of any orders of protection that may have already been issued by **any** court relating to the defendant and any person(s) for whom an order may be sought at the time of the arraignment. To comply with this statutory requirement, every court must have a protocol in place for automatically checking the domestic violence registry on a routine basis before issuing orders of protection. (See memorandum from Judge Traficanti, dated August 6, 2002, Appendix D, pp. 5-8).

b. The criteria for issuing temporary orders of protection are contained in CPL §530.12 for family offense matters and in CPL §530.13 for non-family offenses. The court has the power to issue such an order as a condition of any order of recognizance or bail or adjournment in contemplation of dismissal. **The victim need not be present before the court for the court to consider and grant an order of protection.** The court must use the official TOP form promulgated by the Office of Court Administration (Appendix B, Family Offense and Other Domestic Violence Crimes; Appendix C, Non-Family Offense) and must inquire as to whether the defendant has access to weapons and whether there is a risk of firearm injury to the victim. (See, Section V, Firearms). The TOP must plainly state the expiration date. It is within the discretion of the court to determine the period of time a TOP will be valid, but it should be of sufficient duration to protect the victim during the pendency of the proceeding.

c. The criminal court TOP in **family offenses** may contain any of the conditions listed in CPL §530.12(1), which are set forth on the official form (Appendix B). A notation must be made (if no court reporter is present) stating that these conditions will achieve their purpose. Among the factors that the court should consider are prior orders of protection, prior incidents of abuse, past or present injury, drug or alcohol abuse, and access to weapons. CPL §530.12(1)(a). **It is permissible to order the defendant out of the home.**

d. The terms for a non-family offense OP are listed in CPL §530.13(1) and set forth on the official forms (Appendix B, Family Offense and Other Domestic Violence Crimes; Appendix C, Non-Family Offense).

NOTE: In addition to those terms enumerated on the official forms, the safety concerns of the victim may warrant additional protections, such as directing the defendant to stay away from the victim's car or to refrain from consuming alcoholic beverages or controlled substances before and during court ordered visitation. Orders of protection need to include conditions with details applicable to specific cases. Magistrates should ask victims for specific information that will assist in tailoring effective orders of protection.

e. If issuing a TOP, serve the defendant by handing him or her a copy. The defendant should acknowledge receipt of the order by signing the original order, which will be retained in the court's file. Advise the defendant of the meaning of the terms of the order. The magistrate should determine that the defendant understands the terms of the order.

f. Set a return date and tell the defendant that he or she must return to the court on that specified date and time and that if the defendant fails to appear the court may issue a warrant and will continue the TOP until the defendant appears in court.

g. **Registry Center** -- Follow registry requirement for all orders of protection. (See, Section VI and Appendix D).

h. Mail a copy of the TOP to the victim and file a copy at once with the local police department and if the local police department is not open 24 hours a day, file it with a police department that is open. If the victim is proceeding in Family Court simultaneously, the court must send copies of all the documents generated to the clerk of the appropriate Family Court. (See Section VII, Transmittal of Case to Family Court).

6. **Bail:** In conjunction with setting a return date, the court, except in rare and enumerated situations, is to consider the issue of bail. The court is to either fix bail or release the defendant on recognizance **unless** the defendant is charged with committing an A felony, or any felony and has two prior felony convictions. In that case, the local magistrate is without authority to set bail and must remand the defendant without bail. When bail is set and the defendant cannot post it immediately, the defendant will be remanded to the Dutchess County Jail. **A TOP can be issued at the same time and concurrent with the setting of bail; the issues are separate and distinct.**

7. **Pretrial Release Programs:** Probation staff interview Dutchess County Jail inmates twice daily during the work week and once daily on each weekend day. A recommendation regarding pretrial release will be forwarded to the local court following an interview with the defendant. The written communication will include a recommendation for either continuation of the bail or release into an appropriate probation pretrial program.

One of the following programs may be selected following an evaluation of the defendant's criminal record if any, past history of keeping court appearances, and social and employment issues. Probation staff try to place the defendant in the appropriate program based on the information gathered through various sources.

a. **ROR/RTP** (Release on Recognizance/Release to Probation)

This is the least restrictive of the pretrial programs. Defendants report to the Office of Probation and Community Corrections on a weekly basis and probation staff monitor compliance with court appearances. A person may be released on recognizance without being placed on Probation's pretrial program. In this instance, they will not, however, be supervised by the Probation Department in any manner whatsoever.

b. **RUS** (Release Under Supervision)

If the court attaches special conditions to the defendant's release (such as participation in the Domestic Abuse Awareness Classes for Men (DAAC), drug and/or alcohol testing or evaluation, counseling, or other mandates), the defendant will be placed on RUS.

c. **Intervention Program for Chemically Dependent Male Batterers** (Residential Batterers Program)

This program is designed as a pretrial option for chemically dependent male batterers. The purpose of the program is to provide an intervention that will address the cycle of domestic violence with men who are also chemically dependent. Although battering is not the result of chemical dependency, many batterers are chemically dependent and may be more likely to commit acts of battering while under the influence of alcohol or other substances. This program provides a variety of interventions that simultaneously address the issues of domestic violence and chemical dependency. Men placed in the program will reside at the Alcohol Crisis Center (ACC) while attending Domestic Abuse Awareness Classes for Men (DAAC) and undergoing an evaluation and treatment at the Dutchess County Department of Mental Hygiene. Defendants are required to comply with all treatment recommendations, whether inpatient or community based.

Probation staff will notify the court when a defendant is found eligible for the program. Admission into the program is contingent upon a bed being available at the ACC. The order for release into the program will be prepared by the Office of Probation and Community Corrections.

d. **EM** (Electronic Monitoring)

All individuals placed on Electronic Monitoring **must be pre-screened by Probation Staff**. This option allows for 24 hour, 7 days per week monitoring. This is accomplished through a radio transmitter that is attached to the defendant's ankle. Probation officers provide intensive supervision. An order staying the bail must be signed by the remanding judge. This order is prepared by the Office of Probation and Community Corrections. In order for a defendant to be placed on electronic monitoring, a suitable residence must be available and victim safety issues must be

addressed.

e. Transitional Housing

This program is designed for the individual with a serious substance abuse problem, coupled with a need for safe and stable housing. It is not designed solely for domestic violence cases. Individuals placed in the program are either participating in the Intensive Treatment Alternative Program (ITAP) or are waiting for admission to an inpatient program. Some individuals return to the facility briefly upon completing an inpatient program. It is a locked facility and individuals must be pre-screened for suitability prior to admission. An order staying bail must be signed by the remanding Judge.

8. When placing a defendant in one of the Probation Department's pretrial programs, the court is to forward to the Probation Department a copy of any order of protection it issued.

9. Copies of **all** accusatory instruments and the circumstances of bail or release on recognizance together with a copy of any order or protection issued should be transmitted to the District Attorney within 24 hours of the conclusion of the arraignment procedure.

B. Issuing a Criminal Court *Ex Parte* Temporary Order of Protection on Behalf of the Victim

1. The local criminal court may issue a TOP for the victim when a criminal complaint has been filed but no arrest has been made (e.g., when the defendant flees the scene or victim contacts police after the incident) or where an order of protection was not issued at arraignment and the victim later seeks one. The police must advise the victim of the right to see a local judge to obtain a criminal court order of protection. CPL §530.11(6).

2. The victim may be present to make the request, but this is not required. The police or the assistant district attorney may make the request on behalf of the victim.

3. The local judge is required to read or give the complainant the "notice of rights." CPL §530.11(6). In addition, the court is to supply all of the necessary forms. CPL §530.12(14). The judge is to ensure that the victim understands the options to proceed in criminal court or Family Court, or both simultaneously, and the ramifications of being in each court. (See, Section II). The judge should also advise the victim of the right to counsel in Family Court, and explain the right to have appointed counsel if the victim is indigent. Finally, the judge should advise the victim of available community resources. (See, Section XI, Community Resources)

4. The court is to inquire as to the existence of any orders of protection that may already have been issued by any court pertaining to the defendant and any person or persons for whom an order is being requested. To comply with this statutory requirement, every court must have a protocol in place for automatically checking the domestic violence registry on a routine basis before issuing orders of protection. (See the memorandum from Judge Traficanti, dated August 6, 2002, Appendix D, pp. 5-8.)

5. The criteria for issuing temporary orders of protection and terms are contained in CPL §530.12(1) for family offenses and in CPL §530.13(1) for non-family offenses. The court must use the official forms promulgated by the Office of Court Administration (Appendix B, Family Offense and Other Domestic Violence Crimes; Appendix C, Non-Family Offense). The TOP must plainly state the date on which it expires. It is within the discretion of the court to determine the period of time a TOP will be valid, but it should be of sufficient duration to protect the victim during the pendency of the proceeding.

NOTE: In addition to those terms enumerated on the official forms, the safety concerns of the victim may warrant additional protections, such as directing the defendant to stay away from the victim's car or to refrain from consuming alcoholic beverages or controlled substances before and during court ordered visitation. Orders of protection need to include conditions with details applicable to specific cases. Magistrates should ask victims for specific information that will assist in tailoring effective orders of protection.

6. If an arrest warrant is issued for the defendant's appearance, the TOP may continue until the defendant appears in court. CPL §530.12(4); 530.13(3).

7. Explain to the victim that the TOP must be duly served on the defendant before it can be enforced and that the court will arrange for service.

8. Request that the police serve the TOP (in jurisdictions where the NY State Police is the responding agency, the TOP must be given to the Sheriff's office for service) or send it to Family Court for service by the private process server. (See Section VII and Appendices H and I)

9. **Arrest warrant:** The court has the power to issue an arrest warrant upon the filing of an accusatory instrument. CPL §120.20. The police can serve the TOP and arrest warrant together. **Reminder,** if an arrest warrant is issued, the TOP may continue until the defendant appears in court. CPL §530.12(4); 530.13(3).

10. **Registry Center:** Follow the registry requirement for all orders of protection (See, Section VI and Appendix D).

11. Mail a copy of the order of protection to the victim, if the victim is not present. Forward a copy to the local police department and if it is not open 24 hours a day, to a police department that is open. If the victim is proceeding in Family Court simultaneously, the court should send copies of all the documents generated to the clerk of the appropriate Family Court (See, Section VII, Transmittal of Papers to Family Court).

C. Issuing Final Orders of Protection (OP)

1. Upon conviction for any offense against a family member, the local court may issue an OP on behalf of the victim, the victim's family, a member of the victim's household, or a witness designated by the court (CPL §§530.12(5); Appendix B). When the Court has not issued an order of protection pursuant to CPL §530.12, the court may issue an OP for the victim, the victim's family, member of the victim's household, or a witness designated by the court upon conviction of a defendant for any offense (CPL §530.13(4); Appendix C). The term “conviction” includes a YO adjudication.

2. **Terms:** A criminal court OP in **family offenses** may contain any of the conditions listed in CPL §530.12(5) that are set forth on the official form (Appendix B). A criminal court OP in non-family offenses may contain any of the conditions listed in CPL 530.13(4) that are set forth on the official form (Appendix B, Family Offense and Other Domestic Violence Crimes; Appendix C, Non-Family Offense)

NOTE: In addition to those terms enumerated on the official forms, the safety concerns of the victim may warrant additional protections, such as directing the defendant to stay away from the victim’s car or to refrain from consuming alcoholic beverages or controlled substances before and during court ordered visitation. Orders of protection need to include conditions with details applicable to specific cases. Magistrates should ask victims for specific information that will assist in tailoring effective orders of protection.

3. **Duration:** The permissible duration of orders of protection are set forth in CPL §530.12 and 530.13 as follows:

- a. Felony conviction: Duration of an OP shall not exceed the greater of:
 - 1. Five years from date of conviction; or
 - 2. Three years from the date of expiration of the maximum term of an indeterminate sentence or the term of a determinate sentence actually imposed.
- b. Class A Misdemeanors: Up to 3 years from the date of conviction.
- c. Any other offense: Up to 1 year from the date of conviction.

2. The OP is in addition to the sentence, which may include incarceration, fine, probation, conditional discharge, unconditional discharge or split sentence.

3. Where a TOP was issued, the court must state on the record the reasons for issuing or not issuing an OP. CPL §§ 530.12(5); CPL 530.13(4).

4. **Firearms:** When issuing an OP, the court must make an inquiry with respect to firearms (See, Section V).

5. As with the TOP, the judge should have the defendant acknowledge service by signing the OP. Copies should then be given to the defendant, the Assistant District Attorney, and the police department that handled the original complaint, noting on the police copy that the defendant has been personally served in court. A copy should also be sent to a police department that is open 24 hours a day. The judge should remind the victim that a copy may be filed with the police in any jurisdiction covered by the OP (e.g., place of employment or school).

6. Registry Center: Follow registry requirement for all orders of protection. (See, Section VI and Appendix D).

D. Dispositions

As part of a sentence of probation or a conditional discharge or as a condition of an adjournment in contemplation of dismissal, the judge may require a defendant to complete the Domestic Abuse Awareness Classes for Men (DAAC -- the 26-week group educational program for male batterers given by Family Services, Inc.). (See Section XI, Community Resources.)

E. Enforcement: Violations of TOP's and OP's

1. When a defendant is brought in for an alleged violation of a criminal court TOP or OP, if the court is satisfied by competent proof that the defendant has willfully failed to obey the order, it may:

a. Revoke an ROR or an order of bail, forfeit bail, and commit defendant to custody. CPL §§ 530.12(11)(a); 530.13(8)(a).

b. If there was an ACD, restore the case to the calendar and commit the defendant to custody, or impose or increase bail pending trial on the original offense. CPL §§530.12(11)(b); 530.13(8)(b).

c. Revoke a CD and impose probation or imprisonment. CPL §§530.12(11)(c); 530.13(8)(c)). This can be done only after a hearing in accordance with CPL §410.70.

d. Revoke probation and impose a sentence of imprisonment in accordance with the Penal Law based on the original conviction. CPL §§530.12(11)(d); 530.13(8)(d). This can be done only

after a hearing in accordance with CPL §410.70. If the act that constitutes the violation of a criminal TOP or OP is a crime or a violation, the defendant may be charged with and tried for that crime or violation, in addition to criminal contempt charges.

e. Conduct a contempt hearing pursuant to the Judiciary Law to determine if the defendant has willfully violated the order. If the court finds that defendant's act was willful, it may sentence the defendant for up to three months and/or impose a fine of up to \$1,000. Judiciary Law §§750, 751.

2. Prosecutors may charge the following crimes for violations of criminal and Family Court orders of protection:

a. Criminal Contempt, Second degree, which is an A misdemeanor (Penal Law §215.50).

b. Criminal Contempt, First degree, which is a class E felony (Penal Law §215.51), and includes different aspects of violating an order of protection issued by **any** court that has been duly served or of which the defendant has knowledge because he or she was in court when it was issued:

i. Commits the crime of Contempt 2nd by violating a "stay away" provision of an order after a prior conviction of Contempt 2nd for violating such a provision of an order within 5 years. PL §215.51(c).

ii. Violates an order of protection by committing specific acts, which include: intentionally placing or attempting to place the protected person in reasonable fear of physical injury, serious physical injury, or death: (a) by displaying a dangerous weapon or instrument or by a threat or threats; (b) by physically menacing such person or engaging in stalking behaviors such as repeatedly following her or him; or (c) through communications, whether mechanical, electronic, or written means. Other acts that will subject a person to felony prosecution include harassing, annoying, threatening, or alarming the protected person by (a) striking, shoving, or kicking the person, or attempting or threatening to do so; or (b) repeatedly telephoning such person with no purpose of legitimate communication. PL §215.51(b).

iii. Intentionally or recklessly damages the property of a person protected by the order or jointly held property in an amount exceeding \$250.00.

c. Aggravated Criminal Contempt, which is a class D felony (Penal Law §215.52). A person is guilty of aggravated criminal contempt when in violation of a duly served order of protection, or such order of which the defendant has actual knowledge because he or she was present in court when such order was issued, he or she intentionally or recklessly causes physical injury or

serious physical injury to a person for whose protection such order was issued.

d. Menacing, Second degree: Penal Law §120.14(3) makes it an A misdemeanor to menace in violation of a "stay away" provision of an order.

3. If the act that constitutes the violation of a criminal TOP or OP is a crime or a violation, the defendant may be charged with and tried for that crime or violation, in addition to criminal contempt charges. CPL §530.12(11)(d). Punishment for contempt based on a violation of an order shall not affect the original charge nor reduce or diminish that sentence.

4. **OPTIONS FOR VICTIM:** A family offense that occurs after issuance of a TOP or OP is deemed a new offense and, in addition to proceeding on a violation as noted above, the victim may seek to:

- a. File a new accusatory instrument. CPL §530.12(7), and/or
- b. File a Family Court petition as a new proceeding. CPL §530.12(7).

F. Modification of TOP's and OP's:

Any motion to vacate or modify a TOP or OP **must be on notice to the non-moving party**, (CPL § 530.12(15)) except as provided in CPL §530.12(3-b), which sets forth the local criminal court's emergency powers to modify a Family Court TOP or OP when Family Court is not in session, upon the submission of an affidavit. See, Section VIII(E); Appendix K.

NOTE: If the court modifies a TOP or OP, the court must issue a new order, not make changes on the existing one.

X. ENFORCEMENT OF A SUPREME COURT ORDER OF PROTECTION

1. In any matrimonial action or child custody/visitation proceeding, the Supreme Court has the power to issue temporary and final orders of protection and to provide the same relief as is available under the Family Court Act. Domestic Relations Law §§240(3), 252. In custody cases, a final order may remain in effect during the child's minority.

2. Unless the Supreme Court has retained exclusive jurisdiction, the orders may be enforced in Supreme or Family Court. DRL §252.

3. The Supreme Court may not *sua sponte* consolidate actions, and it may not vacate or modify a Family Court TOP or OP between the same parties except on motion with notice to the non-moving party. DRL §252.

4. When a defendant is arrested for violating a Supreme Court TOP or OP or on a warrant issued by the Supreme Court in connection with such alleged violation, and the Supreme Court is not in session, the arrested person shall be brought before a local magistrate (who never sits as a Supreme Court judge) for arraignment. That arraignment shall be in the county of arrest, or if the arrest is pursuant to a warrant, in the county in which the warrant is returnable. The local magistrate shall either commit the defendant to the custody of the Sheriff, admit to, fix, or accept bail, or ROR the defendant pending an appearance in the court that issued the TOP, OP, or warrant. Unless the complainant requests otherwise, in addition to scheduling further criminal proceedings, if any, the court shall make the matter returnable in Supreme Court for a contempt hearing at 9:00 A.M. the next day that the court is in session. DRL § 240(3-b). The Supreme Court has the power to punish for criminal contempt any violation of its orders. Judiciary Law §§750, 751.

5. In all cases the police must see that the Supreme Court Justice who signed the order gets the Securing Order the next morning before 9:00 A.M. Local magistrates should have the court clerk fax the relevant documents to the Supreme Court Justice's Chambers before 9:00 A.M. so that the Justice learns that the defendant is scheduled to appear for a contempt hearing. In addition, if the complainant is not aware of the scheduled hearing the court should make sure that she or he is apprised of the proceeding and of her or his right to be present.

6. The defendant may also be subject to prosecution for criminal contempt upon the filing of a new accusatory instrument. An accusatory instrument alleging a violation of Penal Law §215.50 (Criminal Contempt, 2nd Degree), a class A misdemeanor, should be handled as a new misdemeanor in the local criminal court of competent jurisdiction. An accusatory instrument alleging a violation

of Penal Law §215.51 (Criminal Contempt, 1st Degree), a class E felony, or a violation of Penal Law §215.52 (Aggravated Criminal Contempt), a class D felony, should be handled as a new felony when filed in the local criminal court.

7. If the act that constitutes the violation of the order of protection is a crime or violation, the defendant may be charged with and tried for that crime or violation in addition to the contempt charge.

NOTE: Constitutional double jeopardy principles may limit the victim's ability to receive relief in both courts in contempt proceedings.

XI. ENFORCEMENT OF OUT-OF-STATE ORDERS OF PROTECTION

1. Out-of-state orders of protection are enforceable in New York State. The federal Violence Against Women Act (VAWA) provides that **full faith and credit** shall be given to any order of protection issued by any other state or Indian tribe, the District of Columbia, a commonwealth, territory, or possession of the United States, and enforced as if it were a New York order, provided the following statutory requirements are met. 18 USC §2265; DRL §§240(3-c), 252(7); CPL §530.11(5); FCA §154-e.

2. The court that issued the order must have had personal jurisdiction over the defendant and the matter, and the defendant must have been given reasonable notice and an opportunity to be heard. 18 USC §2265; CPL §530.11(5); DRL §§240(3-c), 252(7); FCA §154-e. In the case of an *ex parte* order this requirement is satisfied and the order is enforceable in New York if it has been served on the defendant and if a court date is scheduled within a reasonable period of time.

3. An out-of-state order of protection should be **presumed** valid if:

- a. the order of protection contains the names of the correct parties, and
- b. the order of protection has not expired.

4. Out-of-state orders may be filed with the local criminal court, Family Court, or Supreme Court, without a fee, if accompanied by a sworn affidavit attesting that upon information and belief the order has not been vacated or modified (CPL § 530.11(5); FCA §154-e(2); DRL 240(3-c(b), Appendix L)). A victim who wishes to file with Supreme Court will have to request a no-fee index number from the clerk. Most victims will find the process of filing out-of-state orders easier through the Family Court or local criminal court.

5. Once the order is filed, the court shall transmit the information regarding such order to the statewide registry. **Registration is not required for the out-of-state order to be enforceable.** Victims need to complete the Family Protection Registry Information Sheet. (Appendix D, page 9).

6. **Mutual Orders of Protection:** If the out-of-state order is a mutual order of protection, the defendant may **not** enforce it insofar as it benefits him or her, unless a cross or counter petition was filed and the issuing court made specific findings that each party was entitled to such an order. The out-of-state order remains enforceable **against** the defendant.

7. In **enforcing** out-of-state orders, the laws and procedures of **New York State** apply.

8. An out-of-state order can serve as a predicate for a charge of Criminal Contempt under New York State penal law (*People v. Hadley*, 172 Misc.2d 697; 18 U.S.C. §2265).

9. Similarly, a New York order is entitled to **full faith and credit** throughout the United States.

NOTE: To protect victims, the court should advise the victim to contact local authorities if she or he intends to travel or move to another state in order to insure the effectiveness of the New York order.

XII. FEDERAL DOMESTIC VIOLENCE LAWS

In addition to the federal requirement that full faith and credit be accorded to orders of protection issued by another state or Indian tribe, the District of Columbia, a commonwealth, territory or possession of the United States, there are other relevant federal criminal laws on domestic violence under the Violence Against Women Act and provisions under the Gun Control Act that include domestic violence related crimes. These laws are prosecuted by the Department of Justice or the Bureau of Alcohol, Tobacco and Firearms (ATF). Where appropriate, the local court may notify the United States Attorney's Office in White Plains (914-993-1903), the Federal Bureau of Investigation (845-564-0277) in Newburgh (for prosecutions under the Violence Against Women Act) or the ATF (914-682-6164) for firearm offenses.

1. Interstate Domestic Violence (18 USC §2261)

It is a crime for a person to travel interstate, or leave or enter Indian tribal country with the intent to injure, harass, or intimidate an intimate partner when in the course of or as a result of the travel, the abuser commits a violent crime that causes bodily injury. The abuser must intend to commit the domestic violence at the time of travel. "Intimate partner" includes a current or former spouse, a past or present cohabitant (as long as the parties cohabited as spouses), and a person with whom the abuser has a child in common.

It is also a Federal crime to cause an intimate partner to cross state lines, or leave or enter Indian tribal country by force, coercion, duress, or fraud if the abuser intentionally inflicts bodily injury on the partner during or as a result of the conduct.

2. Interstate Stalking (18 USC §2261 A)

It is a Federal crime to cross a state line with the intent to injure or harass another person, if in the course of or as a result of such travel, the defendant places the person or a member of the person's immediate family in reasonable fear of death or serious bodily injury. "Immediate family" includes a spouse, parent, sibling, child or any other person living in the same household and related by blood or marriage. The law requires specific intent to violate this subsection at the time of interstate travel.

3. Interstate Travel to Violate an Order of Protection (18 USC §2262)

a. 18 USC §2262(a)(1) prohibits interstate travel (or travel in and out of Indian country) with the intent to violate a valid order of protection that forbids credible threats of violence, repeated harassment, or bodily injury to a victim. The abuser must intend to violate the order at the time of travel and a violation of the order must occur. This section does not require an intimate partner

relationship nor does it require bodily injury.

b. 18 USC §2262(b)(1) makes it a federal crime to cause an “intimate partner” to cross state lines (or leave or enter Indian country) by force, duress, or fraud during which or as a result of such, there is bodily harm to the victim in violation of a valid order of protection. This subsection requires that a person intentionally injured an intimate partner in violation of an order of protection during the course of or as a result of the forced or coercive travel.

4. Gun Control Act

a. Prohibition Against Possessing Firearms or Ammunition when Subject to a Protective Order

18 USC §922(g)(8) provides that an abuser subject to a valid protective order may not possess firearms or ammunition. The order must be issued on behalf of an “intimate partner” after a hearing at which the respondent had actual notice and an opportunity to be heard. In addition, the order must contain a finding that the respondent represents a credible threat to the victim or by its terms must prohibit the use or attempted use of physical force that would reasonably be expected to cause bodily injury. Respondents in New York courts should be warned that even if the court has not revoked or suspended their license, federal law prohibits the possession of firearms. Unlike New York law, Federal firearms law includes long guns and other rifles. The only guns not included in the Gun Control Act are antique firearms. There is a limited law enforcement exception to this law that permits law enforcement and military personnel to carry weapons while on duty. However, if the order of protection has been issued after certain criminal convictions this exception does not apply.

NOTE: When Orders of Protection are issued against law enforcement and military personnel their departments should be immediately notified to ensure that appropriate measures are taken. Restrictions on the use of firearms by law enforcement and military personnel subject to Orders of Protection vary by departments.

b. Prohibition to Possess a Gun with Misdemeanor Domestic Violence Conviction (18 U.S.C. Section 922 (g)(9))

Anyone convicted of a qualifying misdemeanor of domestic violence is prohibited from possessing a gun. Qualifying misdemeanors include crimes where the use or attempted use of physical force is an element. The defendant must have the right to counsel and a jury trial before conviction. There is no statute of limitations for this prohibition and no law enforcement exception.

SECTION XIII
COMMUNITY RESOURCES

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Agency: **COALITION AGAINST DOMESTIC VIOLENCE AND SEXUAL ASSAULT**

Address: Brookhaven Offices
1 Brookside Avenue
Poughkeepsie, New York 12601

Phone Number: (845) 452-0908

Fax Number: (845) 471-1702

Contact person: Toni Brewer, Co-chair
Doreen Wilson, Co-chair

Description:

The COALITION AGAINST DOMESTIC VIOLENCE AND SEXUAL ASSAULT is a grass-roots coalition of individuals and organizations committed to ending domestic violence in Dutchess County through education, collaboration, advocacy and political action. CADVSA does the following:

- . Publishes a newsletter for the community
- . Reviews and responds to public policies and pending legislation
- . Provides technical assistance to professionals and organizations
- . Holds annual membership meetings
- . Sponsors informational seminars and workshops
- . Coordinates training and in-service programs
- . Works through committees to address police, legal and educational issues
- . Utilizes the media to respond to domestic violence

Individual, family and agency memberships are available.

Group: **DOMESTIC VIOLENCE INTER-AGENCY FORUM**

Address: Brookhaven Offices
1 Brookside Avenue
Poughkeepsie, New York 12601

Phone Number: (845) 452-0908

Fax Number: (845) 471-1702

Contact person: ELISABETH PAK

Description:

This Forum is sponsored by the Coalition Against Domestic Violence and Sexual Assault. Representatives from numerous agencies and systems that deal with domestic violence meet every six weeks to discuss specific domestic violence issues, network, share ideas and to problem solve. This forum is open to all agencies.

Agency: **FAMILY SERVICES, INC.**
Address: 29 North Hamilton Street
Poughkeepsie, NY 12601
Phone: 452-1110
Fax: 452-1119
Contact: Susan West, Executive Vice President

Description:

1. CRIME VICTIMS ASSISTANCE PROGRAM (CVAP)

Services provided to victims of any crime, including domestic violence and rape. Services include 24-hour hotline, professional counseling, advocacy, referral, and compensation claims assistance. Services are free of charge to those who live, work, attend school, or were victimized in Dutchess County. All ages served. Advocacy includes accompanying victims to court and guiding them through the legal system, thus taking some of the burden off court and law enforcement personnel. Program Director: Joan Crawford 452-1110 ext. 3431

2. SEXUAL ASSAULT FORENSIC EXAMINER PROJECT (SAFE)

The Sexual Assault Forensic Examiner Project standardizes at the highest level the medical attention that sexual assault victims receive after being victimized. Specially trained medical staff, on call 24 hours a day, seven days a week, provide medical care and collect forensic evidence. Program Director: Wilma Stasaitis 452-1110 ext. 3407

3. RAPE CRISIS CENTER (RCC)

The Rape Crisis Center is committed to reducing the trauma of sexual assault for its victims and educating the community in the prevention of sexual assault. The Rape Crisis Center provides a 24-hour hotline, 845-452-7272, crisis intervention, information and referrals, advocacy with the legal system, and accompaniment to hospitals, police stations and court. All services provided are free and confidential. Program Director: Joyce Garee 452-1110 ext. 3531

4. ELDER SUPPORT PROGRAM (ELD)

The Elder Support Program provides services to seniors who are at risk of or are actively suffering from abuse or (self) neglect. Services include: crisis intervention, assessment, counseling (at home or in office), short-term case management, information and referrals, and advocacy. Services are free and confidential. Program Director: Carolee Mattison 452-1110 ext. 3405

5. DOMESTIC ABUSE AWARENESS CLASSES FOR MEN (DAAC)

DAAC is a psycho-educational program for men offered by Family Services, Inc. DAAC is one of the sanctions available to the criminal justice system to hold men accountable for domestic violence and is in compliance with the guidelines for batterers' programs formulated by the New York State Office for the Prevention of Domestic Violence.

After group registration and orientation, participants attend 26 weekly classes. Classes are held Monday through Thursday evenings and Saturday morning in Poughkeepsie and on Tuesday nights in Beacon. The fee for each class (including Registration and Orientation)

is \$30, but a sliding fee is available for participants who can document their inability to pay the full amount. DAAC accepts referrals from courts, CPS, Probation, mental health providers, the District Attorney's Office and other county agencies. Reports of compliance, attendance, completion or discharge are made to all referral sources. For general information, call 452-1110, ext. 3134 or to speak with the program director, Pam Wright, call 452-1110, ext. 3135.

Agency: GRACE SMITH HOUSE, INC.

Address: P.O. Box 5205
Poughkeepsie, New York 12602

Hotline: (845) 471-3033

Administration: (845) 452-7155

Brookhaven: (845) 452-7155

Follow-Up: (845) 452-0908

Contact Person: Alisa Robbins, Executive Director

Description:

Grace Smith House was founded in July 1981 and has provided shelter, support services, and transitional housing for women and children of any race, ethnicity, religion, sexual orientation or national group, who have suffered physical, sexual, and/or emotional abuse. Grace Smith House is the only residential domestic violence program in Dutchess County serving the needs of homeless women and children survivors of domestic violence.

Grace Smith House has two domestic violence shelters, a 20-bed facility in Poughkeepsie, and a 10-bed facility in the rural northeast sector of Dutchess County. We manage a 15-unit post-shelter transitional housing program with support services, as well as a non-residential follow-up program support services for women leaving the shelters.

Within the shelters and follow-up programs a range of services are provided: group, individual adult and substance abuse counseling, Latina support and advocacy, housing advocacy and child advocacy. In addition, services are provided based on individual need through advocacy, support, information and referral (e.g., filing for entitlement programs, immigration, mental health, food bank, health, substance abuse treatment, legal, life skills/employment preparation, parenting skills, education, training, etc.).

Women initially come to our program through our hotline. Before being accepted into the shelter, the woman must participate in an in-depth phone intake. Therefore, women should not be brought to the shelter before a phone intake has been completed. Women with chemical dependency issues will be screened by a substance abuse counselor to determine appropriateness of shelter. Women who are under the influence of drugs or alcohol at the time of the referral should first be evaluated for treatment and sobering up services.

Because of the large volume of requests and limited bed capacity, shelter is often not available. If there are no available beds at the time of referral, staff will work with the woman to try to identify alternative and/or other shelter resources.

Agency: **LEGAL SERVICES OF DUTCHESS COUNTY**

Address: 29 North Hamilton Street - 3rd Floor
Poughkeepsie, New York 12601

Phone: 471-0058

Fax: 471-0244

Contact: Jacqueline Frost, Managing Attorney

Description:

Legal Services of Dutchess County represents victims of domestic violence who reside in Dutchess County through the services of three programs in our Poughkeepsie office:

1. Divorce Project:
Full representation in Supreme Court of Dutchess County for victims of domestic violence.
2. Family Court Project:
Full representation of victims of domestic violence in family offense, custody and visitation, child support, and spousal support.
3. Pro Bono Div. Project:
Volunteer attorneys in the community represent victims in obtaining divorces

Intake hours are between 9:00 A.M. and 4:30 P.M., Monday through Friday. We represent low income persons who cannot afford a private attorney.

Agency: **NEW YORK STATE COALITION AGAINST DOMESTIC VIOLENCE**

Address: The Women's Building
79 Central Avenue
Albany, New York 12206

Phone Number: (518) 432-4864

Contact person: SHERRY FROHMAN, Executive Director

Description:

The New York State Coalition Against Domestic Violence (Coalition) is a not-for-profit membership organization whose mission is to eradicate domestic violence and to ensure the provision of effective and appropriate services to victims of domestic violence. Since its inception in 1978, the Coalition has been a driving force in the development of hundreds of programs throughout New York State that provide services to women who are abused and to their children. Coalition members include shelters, safe dwellings, safe home networks, advocacy programs, counseling projects, and concerned individuals who share the Coalition's goal of ending domestic violence.

Over the past 24 years, the Coalition has grown considerably to provide a myriad of services for domestic violence programs in one of the most populated states in the country. Because New York State's 19 million residents live in large urban areas, suburban communities, and rural counties (which comprise 44 of 62 counties in the state), the Coalition has developed an expertise in providing crucial services for a very unique and diverse population.

Today, the Coalition's comprehensive services include the following:

- 24-hour, toll-free, statewide domestic violence hotline providing crisis intervention, counseling and information and referral for approximately 24,000 victims of domestic violence in 2001;
- information, resources, training and technical assistance on funding, legislation, program development, service provision, community collaborations, program evaluation, immigration issues, welfare reform, HIV, substance abuse and additional issues as they impact victims of domestic violence;
- bilingual newsletter covering domestic violence service provision, special projects, resources, regional news, legislative updates and news from national domestic violence organizations and New York State agencies;
- coalition building on a regional and national level;
- assistance in developing policy, legislation, and strategies for the prevention and elimination of domestic violence at the state and national level;
- co-sponsorship of the semi-annual *Batterer Programs: Balancing Social Change, Offender Accountability and Program Implementation*;
- participation on numerous statewide and national advisory committees;
- participation on the Rural Project implemented with ten rural counties to coordinate an improved community response to domestic violence and to facilitate the development of written protocols;
- participation on the Probation Domestic Violence Intervention Project, which develops resource materials, presents trainings, and provides technical assistance for county probation departments and probation officers about domestic violence, and facilitates the designation of a Probation Domestic Violence Liaison in every county in New York State.

Agency: **NEW YORK STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE (OPDV)**

Address: 80 Wolf Road
Albany, NY 12205

Phone Number: 518-457-5800

Fax: 518-457-5810

Website: www.opdv.state.ny.us

Contact Person: LISA A. FRISCH, Director, Bureau of Research and Criminal Justice

Description:

The New York State Office for the Prevention of Domestic Violence is an executive level state agency, created in 1992, which replaced the former Governor's Commission on Domestic Violence established in 1983. OPDV was created to improve the response of State and local communities to domestic violence.

In fulfilling this role, OPDV:

- advises the Governor and the Legislature on statewide domestic violence policy and legislation;
- promotes and facilitates cooperation among state agencies and between various levels of government in the delivery and/or funding of domestic violence services;
- promotes cross-systems' responses to domestic violence; and
- conducts statewide community outreach and public education.

OPDV offers a wide range of domestic violence training and technical assistance including:

- Criminal Justice (including law enforcement, Probation and Parole)
- Courts
- Legal Services
- Social Services
- Healthcare
- Faith-based communities
- Mental Health
- Substance abuse
- Workplace
- Schools

OPDV produces many publications and materials that are available free of charge to local communities. These include posters, brochures, booklets, and palm cards.

Position: **PROJECT COORDINATOR UNIVERSAL RESPONSE TO DOMESTIC VIOLENCE**

Address: Dutchess County District Attorney's Office
236 Main Street
Poughkeepsie, New York 12601

Phone Number: (845) 486-2300

Fax Number: (845) 486-2324

Contact person: KIM GLICKMAN

Description:

The Universal Response Coordinator is overseen by a Steering Committee comprised of representatives from the Dutchess County District Attorney's Office, Dutchess County Public Defender's Office, Dutchess County Family Court, Dutchess County Probation, City and Town of Poughkeepsie Police Departments, Dutchess County Magistrates Association, YWCA Battered Women's Services Program, Grace Smith House, Family Services, Legal Services, Vassar Brothers Hospital and St. Francis Hospital. She is responsible for creating and implementing a universal response to domestic violence in Dutchess County. She works with all agencies and systems in the county that deal with domestic violence to facilitate communication and enhance coordination. She also acts as a liaison between local and state agencies regarding the new legislation and as a resource on the local level if problems are identified.

The Project Coordinator for the Universal Response to Domestic Violence also coordinates the Domestic Abuse Response Team (DART) project, which is a collaborative, specialized response unit designed to provide more immediate services and protection to victims of domestic violence and to increase the monitoring and accountability of batterers. The team consists of representatives from the District Attorney's Office, Probation Department, Police Department, the YWCA Battered Women's Services program and the Domestic Abuse Awareness Classes for Men (DAAC).

Agency: **YWCA BATTERED WOMEN'S SERVICES**

Address: 18 Bancroft Road
Poughkeepsie, New York 12601

Phone Number: (845) 454-6770 (Office)
(845) 485-5550 (Hotline)

Fax Number: (845) 454-6373

Contact person: KATHY GRAHAM, Program Director

Description:

The **YWCA OF DUTCHESS COUNTY BATTERED WOMEN'S SERVICES** assists battered women and their children in their efforts to reach out for help and ultimately live violence-free lives. The agency offers the following services to victims of domestic violence and their children:

- . 24-hour crisis and counseling hotline service
- . Advocacy in both Criminal and Family Courts
- . Short-term individual counseling for domestic violence victims and children
- . Support groups for battered and formerly battered women
- . Emergency housing placements for up to 3 nights
- . Information and referrals
- . Liaison services between victims and human service/social service/police agencies
- . Education and training
- . Emergency transportation
- . Emergency child care
- . Photographic documentation of injuries

SECTION XIV

APPENDICES

- A- Notice of A Victim's Rights (English and Spanish)
- B - Criminal Court Order of Protection (Family Offense and Other Domestic Violence Crimes)
- C - Criminal Court Order of Protection (Non-Family Offense)
- D - Central Registry Instructions and Forms
- E - Family Offense Cover Sheet
- F - Family Court Temporary Order of Protection
- G - Family Court Warrant
- H - Instructions for use of Family Court Process Server
- I - Process Server Information Sheet
- J - Affidavit in Support of Issuance of Family Court Temporary Order of Protection
- K- Affidavit in Support of Modification of Family Court Order of Protection or Temporary Order of Protection
- L - Affidavit in Support of Entry of Out-of-State Order of Protection or Temporary Order of Protection into Statewide Registry of Orders of Protection