



## **Selected New York Domestic Violence Laws Update: 2008-2010**

**Compiled and Summarized by Amy Schwartz, Esq.**

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### **Attorneys for the Child**

**2009 OMNIBUS DOMESTIC VIOLENCE PROGRAM BILL:** Effective December 15, 2009, provides for mandatory domestic violence training for both new and veteran lawyers for children under Family Court Act §249-b.

### **Family Offenses & Orders of Protection**

**EXPANDED ACCESS TO CIVIL ORDERS OF PROTECTION:** Effective July 21, 2008, amends the Criminal Procedure Law §812 and the Family Court Act §530.11 to allow more victims to seek an order of protection in family court and a family offense order of protection in criminal court. The law expanded the definition of “family and household member” to also include victims who “are or have been in an intimate relationship”, regardless of whether they have lived with the abuser or whether the relationship is of a sexual nature. This will include those in LGBT and dating relationships, as well as youth. In addition to other provisions throughout NY law, this change extended mandatory arrest and primary aggressor provisions to apply to these relationships.

**2009 GOVERNOR’S OMNIBUS DOMESTIC VIOLENCE PROGRAM BILL:** This law, perhaps the most comprehensive since the passage of New York’s landmark 1994 Family Protection and Domestic Violence Intervention Act, contains many long-awaited and important criminal and civil components including:

(1) Mandatory domestic violence training for both new and veteran lawyers for children under Family Court Act §249-b (effective December 15, 2009);

(2) Addition of four (4) enumerated sexual assault-based family offenses (Sexual Misconduct, Forcible Touching, Sexual Abuse 3<sup>rd</sup> and 2<sup>nd</sup>) to the Family Court Act §§812,821 and the Criminal Procedure Law §530.11 (effective December 15, 2009);

(3) New requirement under Domestic Relations Law §240 that courts addressing custody and visitation issues must now state on the record how the findings, facts, and circumstances factored into their best interests determination in cases involving domestic violence (effective December 15, 2009);

(4) A report of a domestic violence incident involving a person known by the law enforcement officer as a person under supervision of the parole or probation supervision shall be forwarded to the agency as soon as practicable (effective January 14, 2010);

(5) Multiple provisions regarding unsealing of records involving criminal convictions for Harassment in the 2nd Degree as against a member of the same “family or household” (effective January 14, 2010);

(6) Amendments to the Criminal Procedure Law §§provisions related to issuance of orders of protection during the time period defendant was incarcerated (effective December 15, 2009);

(7) Training for the Division of Human Rights staff to facilitate implementation of the 2009 employment discrimination against domestic violence and stalking victims law (see above) (effective December 15, 2009)

**ELIMINATION OF MARITAL EXEMPTION IN “SEXUAL CONTACT” DEFINITION:** Effective October 13, 2010, amends Penal Law Sections 130.00(3) & 260.31(2). It removes the existing marital exemption and further adds “emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.” The “sexual contact” definition is used in numerous sexual offense-related penal laws, including Sexual Abuse in the 2<sup>nd</sup> and 3<sup>rd</sup> Degrees. In the domestic violence context here, both sexual abuse offenses are specifically enumerated family offenses. In addition to broadening the prescribed conduct, this law conclusively settles any legal question-- and overrides case law-- that prevents married victims of sexual violence from asserting a civil or criminal cause of action for these incidents.

**AMENDMENT TO CRIMINAL MISCHIEF’S “JOINT PROPERTY” DEFINITION:** Effective November 1, 2008, clarifies the penal law definition relative to the crime of criminal mischief, that “property of another” applies to property that is jointly-owned. As a result, this law makes clear that an abusive partner may no longer avoid prosecution by claiming that he or she has a right to damage or destroy property co-owned with their partner.

**PREVENTING AN EMERGENCY CALL AMENDMENT TO CRIMINAL MISCHIEF 4<sup>TH</sup>:** Effective July 6, 2008, it is a crime to prevent a person from communicating a request for emergency assistance by intentionally disabling or removing communication equipment (i.e. telephone, cell phone, or TTY).

**AGGRAVATED HARASSMENT & DIGITAL TECHNOLOGIES:** Effective December 3, 2008, clarifies that any written communication “transmitted or delivered” with the intent to cause annoyance or alarm constitutes aggravated harassment. The definition of “written communication” was expanded to include the more modern technologies (i.e. compact disc and DVD recordings).

**CRIMINAL OBSTRUCTION OF BREATHING/BLOOD CIRCULATION & STRANGULATION:** Effective November 11, 2010, the law established Article 121 of the Penal Law and created a new set of strangulation-related crimes and family offenses. Also includes additional provisions related to wiretapping, DNA database collection, hate crimes, enhanced penalties and other restrictions.

**NON-CONTEMPORANEOUS INCIDENTS:** Effective August 13, 2010, amends Family Court Act Sections 446, 551, 656, 759, 812, 842 & 1056, as well as Domestic Relations Law 240. Provides that orders of protection shall not be denied in support, paternity, child custody and visitation, termination of parental rights, PINS, family offense, child welfare, and matrimonial proceedings, solely on the basis that the events alleged in the petition or at the conclusion of the action are “not contemporaneous.” This law was specifically intended to trump numerous appellate decisions that incorrectly limited access to relief where the alleged or proven incidents of domestic violence did not occur contemporaneously with the petition or were far away in time by the end of the proceedings. This law applies to all orders of protection that are pending or entered on or after August 13, 2010.

**EXTENDING OPs FOR GOOD CAUSE OR UPON CONSENT:** Effective August 13, 2010, amends Family Court Act Section 842 and provides that orders of protection may be extended for good cause or upon parties’ consent. Further, if abuse has not occurred during the pendency of an order, this fact in and of itself cannot for the basis of a denial or dismissal. The bases for all decisions must be set forth on the record. This law specifically applies to all orders entered *before the law’s effective date*, and applies to all proceedings pending on or commenced on or after August 13, 2010.

**ELECTRONIC TRANSMISSION OF OPs TO LAW ENFORCEMENT FOR PERSONAL SERVICE:** Effective July 30, 2010, this law amends FCA Section 153-b and DRL Sections 240 & 252 and authorizes permanent statewide facsimile or electronic transmission of orders of protection, temporary orders of protection, and any associated papers from courts to law enforcement to facilitate personal service of process in Family Court and matrimonial actions. (Note: this law *does not* authorize non-personal or alternative service of process on a party and merely provides a *quicker method of transferring papers* for personal service to be conducted by law enforcement.)

**SERVICE OF EXTENSIONS AND VIOLATIONS OF ORDERS OF PROTECTION PAPERS:** Effective August 30, 2010, this law amends Family Court Act Section 153-b and DRL 240(3-a) and provides litigants with the same options for police and peace office service of default, extended or modified orders of protection, as well as the petitions and their accompanying papers. This law now explicitly provides the same access to service of these other common order of protection proceedings as has been traditionally available for original orders and their pleadings. This law enhances similar legislation from 2007, as well as brings NY into greater compliance with federal requirements under the Violence Against Women Act by making it clear that service of all order of protection-related papers is available at no cost to the litigants.

**REFEREES TO HEAR EX PARTE OPs BEFORE AND AFTER 5pm:** Effective August 13, 2010, this law replaces and adds Judiciary Law Section 212(2)(n) and, for 2 more years, grants the Court's Chief Administrator the authority to allow referees to determine ex parte Family Court applications for an OP when the court is in session or after 5pm.

**MATRIMONIAL OPs TO PROTECT COMPANION ANIMALS & PETS:** Effective July 6, 2008, expands upon the 2006 law that provided protection for companion animals and pets in criminal or family court orders of protection. This law extends the same relief to include orders issued in Supreme Court matrimonial cases. Additionally, the law changes the language referring to "petitioner" to "the person protected by the order" in orders of protection issued under sections of the Family Court Act where the government or a prosecutor, rather than the victim, petitions the court for relief.

**EXPANDED LAW ENFORCEMENT ACCESS TO ORDERS OF PROTECTION & DV REGISTRY:** Effective April 1, 2008, the 2008 State Budget included provisions requiring criminal and family courts to provide a copy of an order of protection to the state or local correctional or jail facility where an inmate will be detained. Copies shall also be similarly provided to the supervising Probation Department or Division of Parole. The law further gave probation officers access to the NYS registry of DV warrants and orders of protection.

**ISSUING OPs FOR WITNESSES IN FAMILY COURT JUVENILE DELINQUENCY CASES:** Effective November 28, 2010 this law amends Family Court Act Section 352.3 by providing that witnesses be granted an order of protection against the respondent upon a showing that the respondent did, or is likely to, intimidate, or attempt to intimidate, said witness.

## **Civil Remedy for Gender-Motivated Violence**

**CIVIL REMEDY FOR BIAS-MOTIVATED VIOLENCE AND INTIMIDATION:** Effective August 31, 2010, this law adds a new Section 79-n to the Civil Rights Law and provides a civil cause of action remedy to redress bias-related violence and intimidation injuries sustained to both person and property where the offense was committed based upon gender (including gender identity and expression), race, color, religion, national origin, ancestry, religious practice, age, disability, or sexual orientation. Also includes an award for attorney's fees to the prevailing party.

## **Confidentiality**

**AUTOMATIC TEMPORARY ORDERS IN NAME CHANGE CASES:** Effective July 7, 2009, provides for an automatic temporary court order sealing court papers during the pendency of the action where an individual seeks a sealed, unpublished name change under Civil Rights Law §64-a. [For a full description of the Empire Justice Center's advocacy

for this new law and its impact, see the Summer 2009 issue of the LSJ available online at: <http://www.empirejustice.org/issue-areas/domestic-violence/case-laws-statutes/family-offense-order-of-protection/new-law-provides-temporary.html>]

**FREE UNLISTED/ALTERNATIVE PHONE LISTINGS FOR DV VICTIMS WITH OPs:** Effective December 11, 2010, this new law amends Public Service Law Section 91 and General Business Law Section 399-yy by providing victims with POPs a free unlisted local or cable telephone number or alternative/modified directory listing. These services are not being mandated under the law and communications companies the option of offering these protective measures to their customers.

## Custody

**2009 OMNIBUS DOMESTIC VIOLENCE PROGRAM BILL:** Effective December 15, 2009, amends Domestic Relations Law §240 and requires courts addressing custody and visitation issues to state on the record how the findings, facts, and circumstances factored into their best interests determination in cases involving domestic violence.

**GOOD FAITH ALLEGATIONS OF DOMESTIC VIOLENCE & CHILD ABUSE:** Effective September 4, 2008, prevents a parent from being penalized in custody and visitation decisions, when such parent made a good faith allegation that a child is the victim of abuse, neglect or domestic violence, or when the parent takes any subsequent actions to protect or seek treatment for the child. The law also requires the court to consider any allegations of abuse when determining visitation and prohibits granting custody to a parent who presents a substantial risk of harm to the child.

**REGISTRIES CHECK IN CUSTODY CASES:** Effective March 24, 2009, requires judges to review the following records, prior to issuing a permanent or successive temporary order of custody or visitation: (1) reports of the sex offender registry; (2) reports of the statewide computerized registry of warrants and orders of protection; and (3) any related Article 10 decisions from child abuse and neglect proceedings.

## Economic Justice

**PROTECTIONS FOR TENANTS FLEEING RENT-REGULATED UNITS DUE TO DV:** Effective August 30, 2010, the law amends NYC Administrative Code 26-403 & 26-504; Section 5 of the Emergency Tenant Protection Act of 1974; Section 2 of the Emergency Housing Rent Control Law; and Section 1 of Chapter 21 of 1962 by providing certain victims of domestic violence who have to flee their rent-controlled or rent-stabilized apartments with eviction protections. While this law is not geographically restricted, as a practical matter, it will almost exclusively impact tenants living in New York City and in the Emergency Tenant Protection Act (ETPA) jurisdictions of Westchester, Rockland and Nassau Counties because it applies only to tenants living in rent-regulated housing (i.e. housing units subject to Rent Control or Rent Stabilization). Technically, the rent control program still covers a very small number of residential units built in Albany, Erie, Nassau and Westchester counties that are still occupied by tenants associated with the *original pre-1947 occupants*. Outside New York City, the ETPA protects tenants in Nassau, Westchester and Rockland counties living in certain types of apartments built before 1974 that are located in localities which have adopted the ETPA protections. The EPTA protections may also be limited by the localities' application of EPTA only to buildings of a certain size.

**PROTECTION FROM EMPLOYMENT-RELATED DISCRIMINATION:** Effective July 7, 2009, adds status as a "victim of domestic violence or stalking" to the existing classes of person against whom employment discrimination is prohibited under NY's Human Rights Law in Executive Law §§296, 292.

**2009 OMNIBUS DOMESTIC VIOLENCE PROGRAM BILL:** Effective December 15, 2009, provides training for the Division of Human Rights staff to facilitate implementation of the (above) 2009 employment discrimination against domestic violence and stalking victims' law.

**AMENDMENT TO UNEMPLOYMENT INSURANCE BENEFITS:** Effective May 20, 2009, among other extensive provisions facilitating New York's compliance to receive federal stimulus package monies, the new law includes an amendment to Labor Law §593 which already provided access to unemployment insurance benefits for victims of domestic violence forced to leave their job for good cause related to the abuse. The amendment institutes a new documentation requirement that continued employment would jeopardize the victim's own safety or that of an immediate family member.

**FREE CREDIT REPORT FREEZE FOR DV VICTIMS:** Effective August 5, 2008, allows victims of domestic violence to protect their credit reports by placing, or temporarily lifting, a freeze on their credit report, without charge. To be eligible, victims must have an order of protection, domestic incident report or police report, or a signed affidavit from a service provider. Also prohibits credit reporting agencies from sharing with any third party the basis for the requested freeze.

## **Education**

**COLLEGE CAMPUS DV INFORMATION:** Effective April 7, 2009, creates a new requirement under Education Law §§6432, 6431(3) that college campuses should update/review policies and procedures relating to stalking and domestic violence for: educating the campus community and security, reporting incidents, counseling and referrals. Additionally, all incoming students must now be provided with information about domestic violence and stalking prevention and services.

## **Human Trafficking**

**MOTION TO VACATE PROSTITUTION CONVICTIONS AGAINST TRAFFICKING VICTIMS:** Effective August 13, 2010, this new law adds a provision to Criminal Procedure Law Section 440.10 and allows a defendant victim of trafficking or sex trafficking to bring a motion to vacate a conviction and dismiss an accusatory instrument where the arresting charge was under Penal Law Sections 240.37 (loitering for the purpose of engaging in a prostitution offense) or 230.00 (prostitution). In order to qualify for relief, the individual must no longer be a trafficking victim or has sought supportive services in place. The law also states that official state or federal documentation of the individual's status as a victim of trafficking or sex trafficking creates a rebuttable presumption that said victim's participation in the offense was the result of being trafficked. However, the law provides that such official documentation of the victim's status is not required for success on the motion.

## **Public Assistance Benefits**

**UNDOCUMENTED BATTERED IMMIGRANT SHELTER REIMBURSEMENT:** Effective September 25, 2008, allows domestic violence service providers to be reimbursed for residential services provided to undocumented immigrant victims of domestic violence.

**SEXUAL ASSAULT INFORMATION PACKETS:** Effective March 15, 2010, amends Social Service Law §13 and directs social services districts to inform public assistance applicants/recipients of their option to receive a packet containing information about local programs and services for victims of sexual assault.

**PROHIBITIONS ON COMPELLING VICTIM-ABUSER CONTACT AS A CONDITION OF RECEIPT OF BENEFITS:** Effective December 15, 2009, amends Social Service Law §459-g and prohibits the state, its political subdivisions, public authorities, and employees and agents thereof from compelling domestic violence victims to contact their abusers, directly or for any reason, as a condition of receiving public assistance benefits and services. The law does provide for the creation of a confidential intermediary in the event that such contact is required and the victim gives informed, written consent.

## Voting Protections

**AMENDMENT TO SPECIAL BALLOTS FOR DV VICTIMS:** Effective April 14, 2010, modifies the 1996 statute (Election Law Section 11-306) authorizing domestic violence victims to cast paper ballots at the Board of Elections, rather than having to appear at their assigned polling places for elections. The law now specifically allows victims of domestic violence to obtain protection where: (1) the victim or a member of their “family or household” has left their home due to the violence; and (2) the flight from the home was a result of the threat of physical or emotional harm toward the individual or toward a member of their family or household. “Members of the same household or family” is defined as including a current or former spouse, persons related by blood or marriage, person with whom the victim has a child in common, or a person in a current or former “intimate relationship.” (Note: this new definition of victim of domestic violence does not mirror the existing definitions of “victim of domestic violence” presently contained in the FCA, CPL, or SSL and it is not the same as the definition now contained in Election Law 5-508.)

**COURT ORDERS PROVIDING FOR THE CONFIDENTIALITY OF DV VICTIMS’ ELECTION RECORDS:** Effective May 5, 2010, creates a new section 5-508 of the Election Law that allows a domestic violence victim to make application to the Supreme Court of the county in which said victim is registered to vote for an order to keep their election registration records confidential. Where granted, the election registration records must be kept separate from other records and not be made available for inspection or copying except by election officials where such records are within the scope of their official duties and are pertinent and necessary to the performance of their official duties. In determining access to this confidentiality protection, the law defined “victim of domestic violence” to include a current or former spouse, persons related by blood or marriage, person with whom the victim has a child in common, or a person in a current or former “intimate relationship” (akin to FCA Section 812). Further, the individual must also have been the victim of a violent felony, disorderly conduct, harassment in the first or second degree, aggravated harassment in the second or third degree, stalking in the fourth degree, criminal mischief, menacing in the second or third degree, reckless endangerment, assault in the third degree or an attempted assault, and such acts resulted in actual physical or emotional injury or created a substantial risk of physical or emotional harm to the victim or the victim’s child. (Note: this new definition *does not* fully mirror the existing definitions of “victim of domestic violence” contained in the FCA, CPL, or SSL and only includes victimization by certain enumerated crimes.)

## 2010 Selected Divorce Reform

**NO-FAULT DIVORCE:** Effective October 12, 2010, this new law amends Domestic Relations Law Section 170 and adds a new ground for divorce where the “relationship between husband and wife has broken down irretrievably for a period of at least six months.” Under the law, no divorce judgment would be granted unless all other attendant matters are resolved including child custody and visitation, equitable distribution, spousal and child support, and counsel and expert fees. The law applies to matrimonial actions commenced on or after October 12, 2010.

*Passed Assembly 7/1/10; Passed Senate 6/15/10; Signed by the Governor 8/13/10 into Laws of 2010, ch.384*

**MAINTENANCE GUIDELINES:** This law comprehensively amends the existing maintenance law in Domestic Relations Law Section 236 by:

(1) Creating a new sub-section 5-a which establishes a process for determining the presumptive amount of temporary maintenance awards with enumerated deviation factors where the presumptive award would be unjust or inappropriate (i.e. domestic violence);

(2) Amending subdivision 6 of part B of DRL Section 236 by supplementing existing factors for determining final or post-divorce maintenance awards;

(3) Amending Part B of DRL Section 236 by adding a new subdivision 6-a directing the New York State Law Revision Commission to study and assess the economic consequences of divorce on married couples, to review the spousal maintenance laws and to submit a preliminary report within 9 months of its effective date, as well as a final

report to the Legislature and the Governor with recommendations by December 31, 2011 (this section was effective immediately on August 13, 2010);

(4) Amending subdivision 1(a) of Part B of DRL Section 236 to cross-reference the updated definition of and process for determining maintenance in subdivision 5-a;

(5) Directing the Chief Administrator of the Courts to promulgate all rules necessary to implement the provisions of this act; and

(6) Establishing the effective dates for the various new sections and amendments.

Temporary and permanent maintenance provisions are effective on October 12, 2010 and apply to those matrimonial actions commenced on or after that date.

**PAYMENT OF COUNSEL & EXPERT FEES IN DIVORCE ACTIONS:** Effective October 12, 2010, amends Domestic Relations Law Sections 237 & 238 and provides for the payment of all counsel and expert fees in matrimonial actions by the more monied party to such action; adds actions to obtain maintenance or distribution of property after a foreign judgment of divorce to the actions for which such fees shall be awarded; directs the court to assure that each party is adequately represented; such actions shall also include actions to enforce a court order. A Chapter Amendment (A.11576/S.8391) modified the effective date from 120 days to 60 days after signing.