



A POLICE GUIDE TO THE NEW YORK “EXPANDED ACCESS TO FAMILY COURT” LAW (effective 7/21/08)

WHAT THE LAW SAYS

When the New York “Expanded Access to Family Court” law went into effect on July 21, 2008, it immediately provided:

- Expanded access to civil orders of protection in Family Court and Integrated Domestic Violence Court to *persons who are or have been in an intimate relationship*;
- The addition of a new subdivision (e) to Criminal Procedure Law (CPL) § 530.11-1 and Family Court Act (FCA) § 812-1, to include *persons who are or have been in an intimate relationship* to the list of “members of the same family or household” in both laws; and
- The added words “regardless of whether they still reside in the same household” to CPL § 530.11-1(c) and FCA § 812-1(c), to now read *persons formerly married to one another regardless of whether they still reside in the same household*.

WHAT THE LAW MEANS FOR POLICE: MANDATORY DIRs and ARRESTS

This law requires police to provide *persons who are or have been in an intimate relationship* with the same protections as all other “members of the same family or household” in CPL § 530.11-1 and FCA § 812-1. These protections include the police applying CPL sections 140.10-4 and 140.10-5 to *persons who are or have been in an intimate relationship*, specifically through:

- Completion of a Domestic Incident Report (DIR) at any report of a crime or offense between *members of the same family or household*, whether or not an arrest is made [CPL § 140.10-5];
- Mandatory arrest for any violation of a “stay-away” provision and/or commission of any family offense in violation of any applicable duly served order of protection or special order of conditions [CPL § 140.10-4(b)(i) and (ii)];
- Mandatory arrest for any felony (except subdivisions 3, 4, 9, or 10 of section 155.30 of the penal law) or any family offense misdemeanor committed by a person against a *member of the same family or household* [CPL § 140.10-4(a) and (c)]; and
- Primary physical aggressor identification and arrest when an officer has reasonable cause to believe that more than one *family or household member* has committed a family offense misdemeanor [CPL § 140.10-4(c)].

Simply stated, the expanded definition of ‘members of the same family or household’ extends to the DIR completion and mandatory arrest provisions of the CPL. Therefore, police officers must complete DIRs and apply mandatory arrest and primary aggressor provisions where legally required at calls involving or alleging “persons who are or have been in an intimate relationship,” as defined in CPL § 530.11-1(e) and FCA § 812-1(e). Police should also refer all current or former “intimate partner” victims to appropriate domestic violence services.

EQUAL ACCESS FOR ALL CURRENT OR FORMER INTIMATE PARTNERS

This law expands access to Family Court and Integrated Domestic Violence Court civil orders of protection and provides other enhanced criminal and civil protective measures to all current or former “intimate partners,” regardless of whether such persons have lived together at any time, including:

- Heterosexual dating couples, including adolescents/teens, and
- Same-sex dating couples, including adolescents/teens.

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DETERMINATION OF PERSONS WHO ARE OR HAVE BEEN IN AN INTIMATE RELATIONSHIP

The term *intimate relationship* is not specifically defined within CPL § 530.11-1(e) or FCA § 812-1(e). Exactly what constitutes an “intimate relationship” for purposes of a civil order of protection will be decided by each individual judge, based on the facts of the case. In that regard, the law provides the following factors for judges to consider, but not be limited to:

- The nature or type of relationship, regardless of whether the relationship is sexual in nature;
- The frequency of interaction between the persons; and
- The duration of the relationship.

Note: The law clearly states that neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an “intimate relationship.”

The factors listed above can also provide assistance to police officers in their investigations, including completing the DIR sections entitled “living situation” and “relationship.” There may also be domestic incidents where officers have reasonable cause to believe that a person committed a crime against another person, but they are unable to determine whether the suspect and victim are or have been in an “intimate relationship” or otherwise “members of the same family or household.” In such cases, officers may be unsure whether an arrest is mandated pursuant to CPL § 140.10-4, but they may still be able to arrest the suspect pursuant to CPL § 140.10-1.

PRIMARY PHYSICAL AGGRESSOR ANALYSIS

Regardless of the relationship of the parties, it is crucial that police determine the primary physical aggressor, in accordance with CPL § 140.10-4(c). In determining the primary physical aggressor, officers must look at the “totality of circumstances” in order to identify the “true abuser.” Officers must use all available evidence, including routinely analyzing any immediate incident in the context of the history of the relationship. One element, in and of itself, may not provide the information to determine the primary aggressor. For example, in cases involving same-sex couples or adolescents/teens, there may be little or no difference in the size or strength of the parties, so it is important that police consistently analyze all information available to them.

FAMILY COURT IS A VICTIM RESOURCE

The “Expanded Access to Family Court” law provides a resource to current or former “intimate partner” victims through access to civil orders of protection and other civil and criminal protective measures. It is NOT meant to provide an option for police to avoid completing DIRs and making mandated and/or appropriate arrests in cases involving *members of the same family or household* by merely referring victims to Family Court.

Bottom line for police: The law merely expands police duties and responsibilities under CPL § 140.10-4 and 140.10-5 to include “persons who are or have been in an intimate relationship.” In addition, CPL § 530.11(6) requires police officers to advise the victim of the availability of a shelter or other services in the community, and to immediately give the victim a copy of the Victim Rights Notice of the DIR.

+++++ (Expanded Access to FC Law – document rev. 5/21/09) +++++