



**EXPANDED ACCESS TO NEW YORK'S FAMILY COURTS:
A BRIEF GUIDE FOR DOMESTIC VIOLENCE SERVICE PROVIDERS**
(effective 7/21/08)

MAJOR PROVISIONS OF THE LAW

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*.

FAMILY COURT ACCESS, PRIOR TO JULY 21, 2008

Access to New York State's Family Courts is limited to those persons who are considered "members of the same family or household" pursuant to section 812-1 of the Family Court Act (FCA). Prior to the passage of this bill, "members of the same family or household" in FCA § 812-1 meant:

- (a) persons related by consanguinity (blood) or affinity (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.

Simply stated, Family Court was essentially closed, and civil orders of protection not available, to persons in relationships not included in FCA § 812-1 (a)-(d), including unmarried teenagers and same sex couples. Orders of protection could be requested only through criminal courts, which meant that many decisions were taken away from the persons who were abused. Seeking an order through criminal court meant that those victimized were required to report the abuse to police, provide evidence that would lead to arrests of their abusers, and rely on district attorneys or their assistants to proceed with the case or not, any of which may be against the abused person's wishes and/or dangerous to their safety.

BEGINNING JULY 21, 2008: EXPANDED FAMILY COURT ACCESS INCLUDES PERSONS WHO ARE OR HAVE BEEN IN AN INTIMATE RELATIONSHIP

The law expands access to Family Court and civil orders of protection to *persons who are or have been in an intimate relationship*, even if they have never lived together, or were never related by blood or marriage, or never had a child in common. *This includes heterosexual or same-sex dating couples, including adolescents and teens.* Although the term *intimate relationship* is not specifically defined within FCA § 812-1(e), the law provides factors to help determine persons who may apply.

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DETERMINATION OF PERSONS WHO ARE OR HAVE BEEN IN AN INTIMATE RELATIONSHIP FOR PURPOSES OF ACCESS TO FAMILY COURT

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 particular case. In that regard, FCA § 812-1(e) provides the following factors for judges to consider, but not be limited to, in determining whether a relationship is an intimate relationship:

- 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.”

There is no checklist or any such “yes/no” guide for judges to determine “persons who are or have been in an intimate relationship.” At least at the beginning of the implementation of this law, service providers should be aware that judges may consider a broad range of persons as being in an “intimate relationship” for purposes of access to Family Court. For example, a Nassau County Family Court judge recently allowed a man’s new girlfriend to file an harassment petition against the man’s ex-girlfriend because both women had children with the man, and the new girlfriend helped raise the ex-girlfriend’s children. [Matter of R.M.W. v. G.M.M. (decided 1/30/2009)]

WHAT THE LAW MEANS FOR POLICE: MANDATORY DIRs and ARRESTS

As noted earlier, the addition of subdivision (e) to FCA § 812-1 expands access to Family Court to *persons who are or have been in an intimate relationship*. That entire list of *members of the same family or household* in FCA § 812-1 is also found in the New York State Criminal Procedure Law (CPL) § 530.11-1 because Family Court and the criminal courts have concurrent jurisdiction over family offense proceedings. The CPL sets forth police procedures and mandates in criminal cases, including mandatory arrest and reporting involving *members of the same family or household* pursuant to CPL § 140.10-4 and 140.10-5. Such police mandates include:

- 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)].

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” within the listing of “members of same family or household” in FCA § 812-1 and CPL § 530.11-1. 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.