

95 INF-20

The Family Protection and Domestic  
Violence Intervention Act

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INFORMATIONAL LETTER

TRANSMITTAL: 95 INF-20

TO: Commissioners of  
 Social Services

DIVISION: Services &  
 Community  
 Development &  
 Housing & Adult  
 Services

DATE: June 23, 1995

SUBJECT: The Family Protection and Domestic Violence  
 Intervention Act

SUGGESTED

DISTRIBUTION: Directors of Services  
 Child Welfare Staff  
 Adult Services Staff  
 Directors of Income Maintenance  
 Domestic Violence Services Providers  
 Agency Attorneys  
 Staff Development Coordinators

CONTACT PERSON: Services & Community Development:  
 Regional Office Director:  
 Albany: Bill McLaughlin, 518-432-2751/ID 0FN010  
 Buffalo: Linda Brown, 716-847-3145/ID 89D421  
 Metropolitan: Anona Joseph, 212-383-1788/ID 0FF010  
 Rochester: Linda Kurtz, 716-238-8201/ID 0FH010  
 Syracuse: Jack Klump, 315-423-1200/ID 89W005  
 Housing & Adult Services, Representative:  
 Irv Abelman, 212 383-1755, USERID 0AM020  
 Tom Burton, 518 432-2987, USERID AX2510  
 Kathleen Crowe, 518 432-2985, USERID ROF017  
 Michael Monahan, 518 432-2667, USERID AY3860  
 Janet Morrissey, 518 432-2864, USERID OPM100

ATTACHMENTS: None

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
94 ADM-11		Parts 452,	Article 6-A-		91 LCM-149
95 ADM-2		453, 454,	SSL		92 LCM-6
95 INF-10		455, 408, 462	131-u-SSL		94 LCM-153

This release is to inform you of the key provisions of The Family Protection and Domestic Violence Intervention Act of 1994. This comprehensive legislation includes major revisions to the Family Court Act (FCA) and the Criminal Procedure Law (CPL) providing for more aggressive law enforcement and criminal justice interventions and protections for victims of domestic violence. The Act addresses the following major areas: choice of forum, mandatory arrest, orders of protection, and training. With the exception of the mandatory arrest provisions, this law is effective January 1, 1995. The mandatory arrest provisions are effective July 1, 1995. A number of the major provisions of this Act are highlighted below.

#### I. Overview of Major Provisions of the Law

1. A key provision of the Act eliminates the three-day "choice of forum" rule which precluded victims of family violence from securing access to both family and criminal courts. By adding a new subdivision (e) to Section 115 of the FCA, the new law establishes concurrent family court and criminal court jurisdiction over family offense matters, permitting victims to proceed in either court or in both courts. Section 530.11 (2-a) of the CPL requires courts to notify complainants in family offense cases of the right to proceed in both criminal and family courts. These revisions allow victims of domestic violence access to the different types of relief available from the family and criminal courts. The standard of proof needed for these family court proceedings is "preponderance of the evidence"; the standard of proof for these criminal court proceedings is "evidence beyond a reasonable doubt". The family court proceeding is a civil proceeding and is for the purpose of attempting to stop violence, ending the family disruption and obtaining protection. Proceedings in family court will not result in a criminal record and are normally closed to the public. The criminal court proceeding is for the purpose of prosecuting the offender, can result in criminal conviction of the offender, and is usually open to the public. A criminal court proceeding, i.e. the filing of an accusatory instrument, must be initiated in order to request a criminal court order of protection.

Four new subdivisions, (g), (h), (i), and (j) have been added to Section 530.11(2) of the CPL and require that, when family court is not in session, criminal courts must arraign a defendant who allegedly violated a temporary order of protection, order of protection or warrant issued by the family court. This section also clarifies that a person may proceed without a court referral in either criminal or family court, or both, and authorizes criminal court to issue a family court order of protection when family court is not in session.

2. Another major provision of the Act amends Section 140.10 of the CPL by adding a new subdivision (4) and subdivision (5) which establish a mandatory arrest policy, under certain circumstances, in family offense cases. Under this section, a police officer is required to arrest a person, and must not attempt to reconcile the parties or mediate where the officer has reasonable cause to believe:

(a) a felony has been committed by such person against a member of the same family or household (with very limited exceptions set forth in Section 155.30 (3),(4),(9) and (10) of the Penal Law); or

(b) a duly served order of protection is in effect, or the respondent or defendant has actual knowledge of the order because he or she was in court when the order was issued; and the respondent or defendant committed an act or acts in violation of a "stay away" provision of such order, or committed a family offense in violation of such order; or

(c) a family offense misdemeanor has been committed by a family or household member against another family or household member, unless the victim requests otherwise. (In this situation the police officer may not ask the victim whether or not to make an arrest.)

A family offense, as defined in subdivision one of Section 530.11 of the CPL, includes acts which would constitute disorderly conduct; harassment in the first and second degree; menacing in the second and third degree; reckless endangerment; assault in the second or third degree; or an attempted assault between spouses or former spouses, or between parent and child or between members of the same family or household. Members of the same family or household means the following:

persons related by consanguinity (blood) or affinity (marriage);  
persons legally married to one another;  
persons formerly married to one another; and  
persons who have a child in common, regardless of whether such persons have been married or have lived together at any time.

3. The new law requires the creation of a statewide registry of all orders of protection in order that state and local law enforcement personnel and members of the judiciary are able to ascertain the existence of orders of protection and temporary orders of protection, and for purposes of enforcing the mandatory arrest provisions when there has been a violation of an order of protection. The registry will be integrated with the State Police Information Network and will be accessible 24 hours a day by state and local law enforcement personnel and members of the judiciary. Standardized forms, which are compatible with the statewide registry, must be developed for orders of protection from both criminal and family courts .

4. The Act also amends Section 842 of the FCA to provide for longer orders of protection (up to three years) and amends Section 827(a) of the FCA to provide for immediate arrest of the batterer if aggravating circumstances exist. Aggravating circumstances include: physical injury or serious physical injury; the use of a dangerous weapon; repeated violations of orders of protection; prior convictions for crimes against the victim; exposure of other family or household members to physical injury which present an immediate and ongoing danger to the victim or any member of the victim's household.

In addition, the amendments to Section 842 of the FCA authorize the family court to issue a temporary order of child support without a finding of immediate or emergency need when it issues a temporary order of protection. The Act also authorizes the family court to issue a medical support execution to secure medical insurance coverage for the alleged victim and children when the court issues a temporary order of protection.

5. The Act also amends Section 841 of the FCA to give the court authority to require the batterer to attend a batterers education program which may include referral to drug and alcohol counseling. The victim may not be ordered to pay the cost of counseling. The court also may order payment of restitution in an amount not to exceed \$10,000.

6. The Act provides for training of police, judges, and district attorneys, in the requirements of the new law. The State Police and the State Office for the Prevention of Domestic Violence, in consultation with the Municipal Police Training Council, will be developing the training.

7. A new subdivision (15) has been added to Section 837 of the Executive Law, requiring the establishment of a standardized "domestic violence incident report form". This form must be used for reporting, recording and investigating every report of a crime or offense between members of the same family or household, whether or not an arrest is made as a result of the officer's investigation. The alleged victim must be given a copy of the report immediately, once it is prepared. The report must be retained by the law enforcement agency for not less than four years.

8. Section 812.5 of the Family Court Act is amended to expand the notice that police and district attorneys must give alleged domestic violence victims concerning the availability of services and their rights under the law. A new paragraph (h) has been added to Section 2803.1 of the Public Health Law (PHL) to require hospitals to provide the required notice to alleged victims of family offenses who are being treated by the hospital. The Commissioner of the Department of Health is required to promulgate rules for the implementation of this section.

9. A new Section 214-b has been added to the Executive Law and a new paragraph (f) has been added to Section 840.3 of the Executive Law which require the Superintendent of the State Police and the Municipal Police Training Council, respectively, to develop written policies and procedures, in consultation with the Office for the Prevention of Domestic Violence, regarding the investigation and intervention in incidents of family offenses.

10. Section 170.55(2) CPL has been amended to permit family offense cases to be restored to the calendar within a one year period of a court order to adjourn the case in contemplation of dismissal. Previously, the authority to restore these cases to the calendar expired within six months.

11. For family offense complaints filed in criminal court, two new subdivisions, (14) & (15), have been added to Section 530.12 of the CPL which require that reasonable efforts be made to notify the complainant if the prosecuting attorney's office dismisses the criminal charges, reaches a plea agreement or declines prosecution of the case. In these cases, the People must advise the complainant of the right to file a petition in family court. Also, notice of any dispositions of cases transferred from family court to the criminal court must be given to the family court.

12. The Act amends Section 846-a of the FCA to permit the court to order a forfeiture of bail for a violation of an order of protection. The

court also may order payment of the petitioner's counsel fees in connection with a violation petition, if the court finds that the violation of its order was willful.

## II. Implications for Casework Staff

### 1. Protective Services for Adults

Protective Services for Adults casework staff should be familiar with the provisions of this new law in order to advocate on behalf of PSA clients who may be victims of adult abuse or neglect by family or household members. When providing counseling to clients who have the capacity to make decisions on their own behalf, caseworkers should describe the provisions of the law that strengthen the effectiveness of orders of protection. These provisions include the mandatory arrest provisions for violations of orders of protection; the provision for longer orders of protection; the authority of the court to order the offender to participate in a batterers program, including alcohol and drug abuse treatment; and the authority of the court to order restitution of up to \$10,000 and the payment of petitioners' counsel fees. Clients also should be advised that orders of protection and arrest warrants concerning domestic violence incidents will be placed in a statewide registry that will be accessible to law enforcement and court officials 24 hours a day, and that violations of family court orders of protection can be heard in criminal court if family court is closed.

Clients also should be advised of the possibility of proceeding in either family court, criminal court or both courts. This flexibility may allow victims of abuse to use the possible transfer of the case from family court to criminal court as leverage in obtaining compliance with family court orders of protection, such as orders to stop a perpetrator from interfering with the delivery of essential services and care.

PSA staff may need to pursue legal interventions, including applying for orders of protection on behalf of impaired victims who lack the capacity to understand the risks they are facing and the consequences of their actions. If an impaired adult is incapable of making choices on his or her own behalf, then PSA is obligated to secure services to ensure the client's safety. Districts should obtain a mental health evaluation if they have concerns about a victim's ability to make decisions on his or her own behalf. When the district is applying for an order of protection on behalf of an incapacitated client, staff should consult with police and/or the district attorney's office concerning whether to apply in family court or criminal court for the order of protection, and whether criminal charges should be filed. PSA can provide depositions to support a criminal complaint filed on behalf of an incapacitated victim. PSA staff also should be aware that all violations of existing orders of protection should be reported. Repeated violations of orders of protection may increase the degree of criminal charges that may be brought against the alleged offender.

Districts should anticipate increased referrals from law enforcement officials concerning impaired or elderly victims of abuse. PSA is listed as a referral source on the Domestic Violence Incident Report Form. With the mandatory arrest provisions, police may be removing an alleged offender who

is the sole caregiver for a dependent impaired adult. Consequently, PSA may need to arrange supportive services in the community such as homemaker or housekeeper chore services or alternative living arrangements on an emergency room and board or long-term basis.

The Department will be working with the Office for the Prevention of Domestic Violence to incorporate information on PSA in the required training on this new law for state police and other law enforcement officials. We will be sharing with them the recently released " Model Protocol Concerning the Working Relationship between Police and PSA" contained in 95 INF-10 and encouraging them to discuss this document in the training.

## 2. Family and Children's Services

In recent studies conducted by the Department on the foster care and preventive services caseloads, domestic violence was identified as one of the most common problems experienced by families receiving foster care and preventive services. In addition, studies of domestic violence show that, in a vast majority of households where adult domestic violence is occurring, the child(ren) in the household also are abused. Therefore, Child Protective Services staff, and Foster Care and Preventive Services staff, in both the districts and voluntary agencies should be familiar with the provisions of this new law in order to assist families who are experiencing adult domestic violence to develop effective safety strategies and appropriate intervention plans. In addition to working more effectively with clients, knowledge of the provisions of this new law will enable caseworkers to collaborate effectively with domestic violence programs, when clients are receiving these specialized services.

When a caseworker determines the existence of adult domestic violence in a family, in addition to advising the client of the availability of specialized emergency shelter and services for victims of domestic violence pursuant to Article 6-A of the Social Services Law, the caseworker should inform the client of the new mandated arrest provisions, the option to proceed with a complaint in either family or criminal court, or both courts, and the authority of the family court, when issuing a temporary order of protection, to issue a temporary order of child support including a medical support execution to ensure medical insurance coverage for the victim and the children. Clients also should be advised that the new law provides for longer orders of protection, and immediate arrest of the batterer under aggravating circumstances which include exposure of the children in the household to physical injury which presents an immediate and ongoing danger to them. Finally, the law requires a statewide registry of orders of protection and arrest warrants concerning domestic violence incidents that will be accessible to law enforcement and court officials 24 hours a day.

Having knowledge of these aggressive law enforcement and criminal justice interventions, as well as the knowledge that immediate child support and medical insurance coverage can be granted to the victim and the children, may result in the victim's willingness to involve law enforcement officials and have the batterer removed from the home. Such actions on the part of the victim may, in some situations, alleviate the need for Child Protective Services to place the child(ren) in foster care where the

domestic violence incident has placed the child(ren) in immediate risk of harm. In other situations, a child's discharge from foster care may actually be hastened when a client who is experiencing domestic violence is willing to involve the police and courts and the batterer is removed from the home. These are just a few examples of how information about The Family Protection and Domestic Violence Intervention Act of 1994 can effect a family's service plan. It is particularly important for caseworkers to make this information available to clients who do not receive specialized domestic violence services, and, therefore, may not have access to services such as counseling which addresses issues relevant to domestic violence including safety options and court advocacy.

Finally, when preparing a case involving domestic violence for a family court proceeding, the caseworker should determine whether it would be helpful in alleviating the violence to recommend that the court require the batterer to attend a batterers education program.

### III. Training Information

Domestic violence is an issue of power and control. Consequently, a victim of domestic violence may be fearful of disclosing information about the problem. The Department offers training courses to assist staff in understanding the general dynamics of domestic violence and to provide information on intervention strategies. The Department currently offers a one day training course entitled "Domestic Violence Training for Local District Supervisors" and a two day course "Domestic Violence Training for Child Welfare Staff". Specific information concerning these courses may be obtained by contacting Barbara Leonard, Office of Human Resource Development at (518) 474-0535.

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Donald K. Smith  
Division of Services & Community  
Development

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Gregory Giuliano, Director  
Bureau of Community Services  
Office of Housing & Adult Services