

CPL ARTICLE 530: BAIL.

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FAMILY OFFENSES:

Family Offenses are between members of the same household: spouses; former spouses; parent/child; relations by consanguinity/affinity; and parties who have a child-in-common (regardless if ever married/lived together).

Family Offenses = Disorderly Conduct (including for these purposes conduct occurring in a non-public place); Harassment 1,2; Aggravated Harassment 2; Stalking 1-4; Menacing 2/3; Reckless Endangerment; Assault 2/3, as well as Attempts thereof AND Criminal Mischief!

Both Family Court and Criminal Court have concurrent jurisdiction over Family Offenses; however Family Court has exclusive where perpetrator would not be legally responsible due to infancy. An election by complainant to proceed in Family Court does NOT otherwise divest Criminal Court of jurisdiction.

The Chief Administrator shall designate Probation/Warrant/Police Officer, or Sheriff, District Attorney, other Law Enforcer as appropriate to inform complainants of right to proceed as Petitioner in Family Court = right to concurrent, civil proceeding; right to counseling referrals; that criminal action may result in conviction; that action commences with filing, not when arrested; nor is an arrest a requirement of such action. No official shall discourage/prevent complainant/petitioner from filing action.

Complainant shall also be advised COURT at first appearance of right to continue in criminal, proceed in family, or both concurrently.

An arrest relating to a SUPREME [not "Superior"] or Family Court family offense proceeding (including violation of protective order), or pursuant to warrant by such court, shall - when Supreme/Family not in session - be returnable before a Local Criminal Court in the county of arrest, Local Criminal Court can arraign defendant/respondent, and issue any appropriate order; such court SHALL consider any bail recommendation noted on the warrant by the issuing court. Case shall then be scheduled for next day Supreme/Family Court in session, unless complainant/petitioner requests otherwise.

Out-of-State Order of Protection are considered valid when issuing court had personal and subject matter jurisdiction, AND when defendant was reasonably noticed of proceedings and given opportunity to be heard; cross-orders must also be supported by pleadings, as well as Judicial Findings. Valid out-State orders shall be afforded full faith and credit; and can be registered without fee upon affidavit of effectiveness stating that such order has not been modified/vacated. However such orders are NOT required to be registered as a provision of enforcement!

Any victim of a family offense shall be informed of community services including shelters by Police/Peace Officer/District Attorney; and also be immediately given a notice of their legal rights, may be done orally where necessary. Department of Criminal Justice Services - in consultation with State Office for Prevention of Domestic Violence - shall promulgate forms in both English and Spanish.

Court can issue a temporary order of protection in conjunction with pending family offense matter, - together with non-commitment securing order, or Adjournment in Contemplation of Dismissal - directing defendant to stay away from home/school/business/place of employment of family member OR witness; Court shall make a determination regarding any stay away provision as to whether the order would serve its purpose absent such stipulation; and specifically referencing defendant's: prior history of compliance with such orders; prior incidents; past/present threats/injury to parties, threats; drug/alcohol abuse; and access to weapons. Order NOT invalid if Court fails to make such determination.

Such Order of Protection can also provide for: refrain from family offense (including on behalf of child's custodian); refrain from risking child's welfare; permitting visitation; allowing access to residence in order to retrieve personal belongings not in dispute; and forbidding the unjustifiable killing of any "companion animal" as defined in Agriculture & Markets Law [dog, cat, other domesticated pet maintained in/near house]. Temporary orders of protection shall specify an expiration date, but may - in conjunction with the issuance of a warrant - extend until "return".

Any Family Court Order of Protection transferred to Criminal Court shall continue in effect until respondent cum defendant is arraigned thereupon. People shall advise Family Court regarding filing and ultimate disposition of accusatory instrument. However nothing herein shall delay the release of respondent from custody if otherwise required.

Upon any dismissal, plea, or decision not to prosecute a criminal action, People shall advise complainant of right to proceed in Family Court.

Motion to modify/vacate family offense order of protection shall be on notice, except for ex-parte emergencies when Family Court not in session, as below.

When Family Court is not in session, Local Criminal Court may issue a temporary order of protection ex-parte to a would-be petitioner; must have affidavit that family offenses was committed, that Family Court is in fact not in session, that petitioner intends to file the petition the next day of session, as well as good cause for the application. Local Criminal Court may also entertain ex-parte emergency applications to modify a Family Court Article 4/5/6/8 order of protection, upon affidavit alleging insufficiency in present form. In either such instance the Local Criminal Court shall make the matter returnable before Family Court on the next day in session; in NO event more than 4 calendar days. Local Criminal Court shall also forward copy of order of protection and affidavit before

such return date; shall send such immediately if already transmitted order by electronically/fax.

At disposition of family offense proceeding, court can issue final order of protection; **MUST** first inquire as to existing orders of protection between parties. If a temporary order had already been issued, Court shall state reasons for granting/denying final order. Order can be for up to: felony = 8 years; Class A misdemeanor = 5 years, all other offenses = 2 years. Years are counted from the date of conviction (includes Youthful offender finding); **HOWEVER** for felonies: the maximum end date of prison sentence may be used instead, if greater. *Final* Orders of Protection for family offense proceedings do **NOT** specify "companion animals" as a permissible provision!

Criminal Court can also issue temporary and final orders of protection on behalf of victims or witnesses, directing defendant to: stay away from home/school/business/place of employment; refrain from harassing/threatening/intimidating/interfering (including family/household members of victim/witness); not unjustifiably kill "companion animals".

All orders of protection must so state nature on their face, however failure to do so does not invalidate them. All order shall specify the date of expiration. The Clerk of Court shall file order with the Sheriff - or Police Department of city - where protected party resides. Clerk **or** protected party may thereafter "from time to time" file the order in other applicable locations (school, work, etc...). Any modification or revocation of underlying order must also be filed in the same manner.

Chief Administrator shall promulgate uniform Statewide forms for orders of protection; for family offenses: such forms shall also be compatible with computerized registry.

Clerk shall also issue orders to defendant and counsel, as well as to protected party. Presenting such order to police officer (or peace officer acting pursuant to special duties) shall constitute authority to arrest defendant in violation thereof.

Any subsequent violation may be prosecuted as a new offense, and can result in a separate sentence not affecting the original one. Failure to obey order of protection is also grounds for revoking Probation/Conditional Discharge/ACD, and Court can commit defendant thereby.

Court issuing order of protection may/must also in certain situations revoke/suspend firearm license - or declare defendant ineligible to obtain one - and direct surrender of firearms. Defendant shall be entitled to a hearing; if order already issued ex-parte, then within 14 days.

Court **MUST** so order where **TOP** issued, **if**: 1) prior violent felony conviction; 2) prior willful violation of O/P, together with infliction of serious physical injury, OR use/threat deadly instrument/weapon, OR other violent offense; 3) prior stalking

conviction.

Court MUST with final order of protection, pursuant to Penal Law Article 400.

Court MUST on violation of order of protection, where such violation consists of: 1) violent felony; 2) stalking; 3) infliction of serious physical injury; 4) use/threat deadly instrument/weapon.

In all other cases the Court MAY issue such directive where there exists a "substantial risk" that defendant will use/threaten firearm.

Order for surrender of firearms shall specify date/time/place to surrender; as well as a description of the guns, to the extent possible. It shall also direct the authority accepting the surrender to immediately notify the court of such receipt. Such surrender shall be deemed "voluntary" in nature; and continues together with the term of the underlying order of protection, unless first modified/vacated.

Order of protection regarding suspension/revocation/ineligibility of firearms license shall specifically so state; Court shall also notify State Police Department in Albany; as well as local P.D. immediately. If family offense, shall also enter such information into the statewide computer registry.

BAIL:

Local Criminal Court **must** bail/RoR defendant for non-felony allegations; MAY for felony complaint; **EXCEPT:** City/Town/Village court can never bail Class A felony, nor where defendant previously convicted of 2 felonies.

Superior Court must bail non-felonies, may bail felonies; **EXCEPT:** not after conviction to Class A felony (pending sentence/appeal), or Class B felony sexual offense by defendant 18+ years of age against infant (under 18) victim.

Superior Court can set/reduce bail (including after conviction and before sentencing) of Local Criminal Court [excepting Superior Justice "sitting" as Local!] - in same county - if bail could not be legally set; was denied; or is excessive. Only one such application allowed per case.

Appellate Division of same department may set/reduce bail for Superior Court case after conviction, but before sentencing/appeal. Only one such application is allowed per case.

Where bail/RoR is allowed but discretionary (including pursuant to appeals), Court must notice District Attorney and allow opportunity to be heard; D.A. can waive right, also deemed waived upon non-appearance. Such court shall also require a report from DCJS or police regarding defendant's prior arrest record, and shall furnish such to defendant's counsel (defendant personally only where pro-se). The D.A. may waive such

requirement, and the Court can dispense with it in an emergency.

Where bail is set/reduced in consideration of appeal, defendant must allege intention to immediately appeal upon sentencing. Bail shall terminate if no appeal taken within 30 days of sentence; and if appeal not perfected within 120 days once taken (unless Appellate Court extends).

If defendant at liberty pursuant to appeal, and decision is affirmed: matter remitted to Criminal Court for execution of sentence. Defendant and counsel - as well as surety - must have 2 days notice, thereafter bench warrant may issue if defendant fails to appear.

Any court setting bail may direct review its determination at any time; and can order defendant to appear, or issue bench warrant as necessary. If Court revokes bail: MUST set new amount where defendant entitled as of right; else MAY.

Grounds for revocation include reason to believe defendant committed subsequent Class A or violent felony relating to intimidation of witness/victim. Court must hold hearing for revocation; may be consolidated with felony complaint arraignment on subsequent offense.

Evidence must be legally admissible and non-privileged, but any such relevant is allowable; defendant can cross-examine. District Attorney can move to introduce transcript of grand jury testimony in lieu of appearance by witness. Defendant may be committed to sheriff prior to revocation hearing, no more than 72 hours. Period can be extended by Court up to an additional 72 hours on request of D.A. for good cause; or where defendant caused/consented to delay.

Revocation shall be for a period not exceeding 90 days (excluding defendant's adjournments); but shall terminate if underlying charges are dismissed/reduced to non-felony (necessitating bail), or where charges for subsequent witness tampering be similarly reduced/dismitted to non-Class A nor violent felony.

BENCH WARRANT:

Bench Warrant issued by Superior Court (including Superior sitting as Local), or Local District Court, or NYC Lower Criminal, can be executed anywhere in the State. Lower City/Town/Village bench warrants are executable in same county, or any adjoining; can also be executed anywhere in the State upon indorsement by the Local Criminal Court in county where arrest will be effectuated. When so indorsed, shall be deemed process of both issuing as well as indorsing court.

Bench warrants are directed to POLICE officer of "geographic area of employment" encompassing where offense committed, or locality of issuing court. MAY be issued to Uniformed Court Officer of NYC/Nassau/Suffolk/Westchester county; to be executed in the court building, or vicinity. If defendant under supervision of parole:

Parole officer can effectuate arrest; if probation = Probation officer, only when authorized by Director.

Bench warrants are executed as arrest warrants. If defendant arrested on bench warrant by police only, and issuing court not in session: if Local Town/City/Village court = arraign at alternate local; Superior = detain in local corrections until next day court in session.

Issuing court MAY attach a "summary" of proceedings to the warrant, such SHALL be considered upon return to any alternate court.

Issuing court MAY allow police officer to "delegate" warrant to police whose "geographic area" is another particular county where defendant is believed to be. Information of delegation may be by telecommunication/mail, and constitutes authority to arrest. Defendant arrested by delegate must be handed off to originally designated police agency for return to issuing court.

SURRENDER:

Any time *before* bail/bond is forfeited: defendant - or obligor (surety of bond or poster of cash bail) - may "surrender" defendant to Sheriff. If bond, Sheriff must be provided Certified Bail Bond. Sheriff shall make written certificate acknowledging receipt of defendant; hold such individual as if committed to custody; and immediately notify the Court. Court shall exonerate bail bond, or return cash bail, upon 5 days notice to District Attorney.

An obligor is empowered to take custody of a defendant within this State for purposes of surrender; and may also indorse bond with written authorization for another individual over 20 years of age to do so instead.