

FCA ARTICLE 8: FAMILY OFFENSES.

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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.

Family Court can transfer a Family Offense to Criminal Court prior to fact-finding, with the consent of the petitioner, and upon notice to the District Attorney.

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

Transcript of Family Offense proceedings shall be made available to D.A. upon request for a criminal case, but shall NOT be re-disclosed.

Court on own motion can at any time direct an Article 4 Support, Article 5 Paternity, or Article 10 Neglect/Abuse case and consolidate with the Family Offense.

Venue: county where acts occurred, or where party/family reside (domestic violence shelter considered residence).

Petition: alleges a specified family offense; a relationship between parties; names of every child in the household, and relationship to Resp (if any); as well as a statement as to whether a verified accusatory instrument had been filed.

Probation Department can attempt to adjust an offense prior to filing for up to 2 months; Court can allow **TWO** further periods up to 60 days each. If an agreement is reached, signed, and submitted to Court: if approved, Court may then issue a final order of protection.

Upon filing, Court can issue a temporary order of protection, and/or summons or warrant.

Summons must be served at least 24 hours before hearing; however Resp may

demand adjournment, in which case Court may not proceed for at least 3 days. Substituted service can replace personal delivery if such is impossible.

Upon return on summons, Resp is advised of petition, given copy, and notified of right to counsel (including free if indigent). Court can then Release on Recognizance, or set bail; Resp may only be committed pending deposit of bail.

Court can issue a warrant if summons can't be served; would be ineffectual; is disobeyed; if Petr/child in danger from Resp; or if Resp is likely to leave jurisdiction. Warrant may also be issued if Aggravating Circumstances are present: physical injury, use of a dangerous instrument, or history of violating orders of protection.

Petitioner cannot serve warrant unless Court permits. However either Petitioner or charitable/philanthropic organization may get a Certificate to present to law enforcement officer in order to arrest Resp. Clerk's Certificate of warrant expires in 90 days, may be renewed. Court shall record and report on unserved warrants.

Court may issue temporary order of support in conjunction with family offense proceedings; and advise Petr of right to Support Collection Unit services.

Fact-finding must be by a "fair preponderance" of competent, relevant, and material proof. Disposition need only be relevant and material; there is NO statutory quantum of proof!

Petitioner can have non-witness friend/relative/counselor/social worker present in court; such individual shall not take part in proceedings, but Court may call for testimony. *Pro-se* Resp only may have such person, **IF** Court does not find it "undesirable".

DISPOSITIONS:

Suspended Judgment up to 6 months.

Probation up to 1 year; may provide for batterer's education and/or drug/alcohol program, which Resp shall pay for unless financially unable.

Restitution up to \$10,000.

Order of Protection up to 2 years, or 5 years if aggravating circumstances; terms: stay away from home/school/business/job of party/parent/spouse/child; permit visitation; allow reentry into residence to get belongings; refrain from family offense; not endanger child; don't kill companion animal; pay counsel fees and medical expenses resultant from particular incident; attend batterer's education program.

Court can also award custody during term of protective order.

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, where: 1) violent felony; 2) infliction of serious physical injury; 4) use/threat deadly instrument/weapon.

Court MUST on finding willful 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.

Violation so Orders of Protection can be filed in either Family or Criminal court, or both. If such violation also constitutes a new offense, a new case may also be filed. Petitions for Violation of Order of Protection may also be maintained for out-State orders.

Summons for Violations shall have notice in bold font at least 8 points in size stating that: Resp is entitled to counsel (free if indigent); warrant may be issued upon failure to appear; and finding of willful failure to obey may be punishable by up to 6 months commitment.

Court may NOT commit defaulting Resp if service was not personally made.

Finding of willfulness shall be on competent proof.

Commitment may be intermittent sentence, revocable at will.