

## New York Law of Orders of Protection<sup>1</sup>

### Domestic Relations Law §§ 240(3) and 252 - Orders of Protection and Family Offenses

Relevant Statutes - Domestic Relations Law §§ 240(3) and 252 - Family Court Act § 842

Domestic Relations Law § 240(3) and 252 of the authorize the Supreme Court to grant an application for an order of protection where a “family offense” has been committed. An order of protection may be made in the final judgment in any matrimonial action or in a proceeding to obtain custody of or visitation with any child under that section. It may be made by one or more orders from time to time before or subsequent to final judgment, or may be made by both such order or orders and the final judgment. They provide that the order of protection may remain in effect after entry of a final matrimonial judgment and during the minority of any child whose custody or visitation is the subject of a provision of a final judgment or any order.

In contrast, Family Court Act section 842 provides that an order of protection under section 841 of the Family Court Act may set forth reasonable conditions of behavior to be observed for a period not in excess of one year by the petitioner or respondent or for a period not in excess of three years upon a finding by the court on the record of the existence of aggravating circumstances as defined in Family Court Act §827 (a) (vii). For the purposes of section 842 aggravating circumstances is defined in Family Court Act §827 (a) (vii) to mean physical injury or serious physical injury to the petitioner caused by the respondent, the use of a dangerous instrument against the petitioner by the respondent, a history of repeated violations of prior orders of protection by the respondent, prior convictions for crimes against the petitioner by the respondent or the exposure of any family or household member to physical injury by the respondent and like incidents, behaviors and occurrences which to the court constitute an immediate and ongoing danger to the petitioner, or any member of the petitioner's family or household. The Supreme Court, as a court of general unlimited jurisdiction, may exercise all of the powers that are conferred upon the Family Court, in addition to its own powers.<sup>2</sup>

It would appear that by virtue of the provisions of the Domestic Relations Law the Supreme Court is authorized by statute to make an order of protection during the entire minority of the child, which may be for a period anywhere up to eighteen years. The provisions of sections 240(3) and 252 of the Domestic Relations Law, which authorize the Supreme Court to issue orders of protection, are almost identical. The Supreme Court’s authority under Domestic Relations Law section 252 is limited to actions for divorce, separation or annulment or an action to declare the nullity of a void

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<sup>2</sup> Kagan v Kagan, 21 NY2d 532, 289 NYS2d 195; Seitz v Drogheo, 21 NY2d 181, 287 NYS2d 29.

marriage, which are actions to dissolve an existing relationship. The Supreme Court's authority under Domestic Relations Law section 240 extends to actions or proceedings to obtain by writ of habeas corpus or by petition and order to show cause the custody or right to visitation with any child of the marriage, in addition to actions for divorce, separation, annulment or to declare the nullity of a void marriage.

#### Procedure to be Applied in Supreme Court and Family Court - Family Court Act §812

The Domestic Relations Law does not specify the procedure nor substantive law for determining whether an order of protection should be granted by a Supreme Court Judge in a matrimonial action. Instead, the procedure and substantive law to be applied is that supplied by Article 8 of the Family Court Act.<sup>3</sup>

The procedure to be followed under New York's domestic violence law is found in Section 812<sup>4</sup> of the Family Court Act, which protects "members of the same family or household."<sup>5</sup> They are defined in Family Court Act § 812. They are defined in Family Court Act § 812 as persons related by consanguinity or affinity; persons legally married to one another; persons formerly married to one another; and persons who have a child in common regardless whether such persons have been married or have lived together at any time, and persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.

The statute does not state the definition of intimate relationship. However, it lists the factors the court may consider in determining whether a relationship is an "intimate relationship". These factors include but are not 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. It provides that neither a casual acquaintance nor ordinary fraternization between two

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<sup>3</sup> Roofeh v Roofeh (1988) 138 Misc 2d 889, 525 NYS2d 765, dismissing motion for an order of protection because defendant husband has failed to allege that cigarette smoking is a crime or violation of any section of the Penal Law and further has failed to allege that the acts of the plaintiff wife in smoking in the marital home in the presence of the children violated any enumerated crime or violation listed in §812 of the Family Court Act.

<sup>4</sup> Family Court Act § 812

<sup>5</sup> Children can be the victim of a family offense. In the Matter of Gloria C. v. William C., 124 Misc.2d 313, 476 N.Y.S.2d 991 (Fam.Ct., Richmond Co., 1984), the court held that an order of protection may be issued on behalf of a fetus. An order of protection may be granted to a domestic partner. Miriam M. v. Warren M., 51 A.D.3d 581, 859 N.Y.S.2d 66 (1st Dep't 2008)

individuals in business or social contexts shall be deemed to constitute an "intimate relationship".<sup>6</sup>

### Scope of Order of Protection

The scope of an order of protection issued pursuant to §240(3) and §252 of the Domestic Relations Law is found in each statute. It may require either party: (a) to stay away from the home, school, business or place of employment of the child, other parent or any other party, and to stay away from any other specific location designated by the court; (b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods; (c) to refrain from committing a family offense, as defined in subdivision one of section 530.11 of the criminal procedure law, or any criminal offense against such child or against the other parent or against any person to whom custody of the child is awarded or from harassing, intimidating or threatening such persons; (d) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in a proceeding or action under this chapter or the family court act; (e) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child; (f) to pay the reasonable counsel fees and disbursements involved in obtaining or enforcing the order of the person who is protected by such order if such order is issued or enforced; or (g) to observe such other conditions as are necessary to further the purposes of protection. In addition, Family Court Act 842 (g) and (h) authorize the court to make an order of protection which would require the respondent to participate in a batterer's education program designed to help end violent behavior, which may include referral to drug and alcohol counseling, and to pay the costs thereof if the person has the means to do so; and to provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the order.

When an order directs a party to stay away from the home, the other spouse or a child, the court must make a determination in a written decision or on the record. The failure to make such a determination does not effect the validity of the order of protection. In making such a determination, the court must consider whether the order of protection is likely to achieve its purpose in the absence of such a condition, subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons. The considerations listed in the statute are not exclusive.

### Crimes that Constitute a Family Offense

Article 8 of the Family Court Act lists the crimes or violations that constitute a "family offense." They are acts which would constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the

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<sup>6</sup> Family Court Act § 812

second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision one of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, criminal obstruction of breathing or blood circulation, strangulation in the second degree, strangulation in the first degree, assault in the second degree, assault in the third degree or an attempted assault, criminal obstruction of breathing or blood circulation or strangulation between spouses or former spouses, or between parent and child or between members of the same family or household except where the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law.<sup>7</sup>

There is no such thing in law as a family offense, no matter how offensive the conduct may be to someone's sensibilities, apart from acts that are specified in the statute, which are defined in the Penal Law.<sup>8</sup> A justice of the Supreme Court in deciding

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<sup>7</sup> Family Court Act § 812, subdivision 1

<sup>8</sup> Di Donna v Di Donna (1972) 72 Misc 2d 231, 339 NYS2d 592.

In *Sherman v Sherman* (1987, 2d Dept) 135 App Div 2d 806, 522 NYS2d 910, the Appellate Division held that the order of protection granted to the husband was not improvidently granted, as the record contained unrefuted evidence that the wife had access to weapons and that she admitted she shot her first husband, though she claimed she had acted in self-defense.

In *Kurppe v Kurppe* (1989, 2d Dept) 147 App Div 2d 533, 537 NYS2d 612, the Appellate Division affirmed that part of a pendente lite order that awarded the wife a temporary order of protection and exclusive occupancy of the marital residence. Each party accused the other of physical assaults, which included allegations that the wife's hand was broken and that the husband was struck with a knife. The parties' daughters, ages 15 and 17, submitted affidavits in support of their mother's allegations and said they were afraid to live with their father. Since the husband did not seek custody, the award of exclusive occupancy was proper to protect the safety of persons or property. In light of the allegations in the wife's affidavit and the daughter's corroboration, the court did not err in awarding the wife a temporary order of protection without a hearing.

In *Zirkind v Zirkind* (1995, App Div, 2d Dept) 630 NYS2d 570, motion gr, in part, motion den, in part (NY App Div 2d Dept) 1995 NY App Div LEXIS 8848, the court issued an order of protection directing the father not to interfere with the mother's custody of the children. The Appellate Division held that the order of protection which stated that it shall expire on March 27, 2006 failed to set forth a finding of aggravating circumstances. Thus, it may not be effective for a period in excess of one year and the court modified it to expire on January 19, 1996.

In *Dominick C. v. Rosina C.*, 230 A.D.2d 760, 646 N.Y.S.2d 696 (2d Dep't 1996), the Appellate Division held that the Supreme Court properly issued a permanent order

whether or not to grant an order of protection must limit the decision to the enumerated crimes or violations listed in §812 of the Family Court Act. A request for a temporary or final order of protection in the Supreme Court that fails to allege any of the above enumerated crimes is defective.<sup>9</sup>

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of protection directing the father to stay away from his son. The law guardian proved that the father sexually abused the child.

<sup>9</sup> See *Peters v Peters* (1984, 2d Dept) 100 App Div 2d 900, 474 NYS2d 785; *Hayes v Hayes* (1986) 131 Misc 2d 317, 500 NYS2d 475; *Di Donna v Di Donna* (1972) 72 Misc 2d 231, 339 NYS2d 592; *Rose v Rose*, NYLJ, November 11, 1987.

In *Peters v Peters* (1984, 2d Dept) 100 App Div 2d 900, 474 NYS2d 785, the Appellate Division stated that based on plaintiff wife's allegations that the defendant husband frequently became intoxicated and physically and verbally abused her—allegations which were corroborated by the affidavits of three persons—the plaintiff was entitled to a temporary order of protection. However, there was no indication that the plaintiff in any way harassed, molested or annoyed the defendant. Thus, the defendant was denied an order of protection.

In *Rose v Rose*, NYLJ, November 11, 1987, a proceeding for an order of protection, the court found there was insufficient evidence to support a finding as required by New York Family Court Act §821 that there was a violation of the specified criminal statutes. Under New York Family Court Act §§812 and 821 a petitioner must establish by a fair preponderance that the respondent spouse assaulted, attempted to assault, or engaged in disorderly conduct, harassment, menacing or reckless endangerment. In order to warrant the issuance of the order, a violation of one of the specified crimes as defined in the penal law must be established (*Hayes v Hayes* (1986) 131 Misc 2d 317, 500 NYS2d 475). "Although the respondent smokes cigars, wears fatigue type clothing, reads *Soldiers of Fortune* magazine and has a drawer full of adult magazines, he has a right to enjoy these activities in his home."

In *Minnus v Minnus* (1978, 2d Dept) 63 App Div 2d 966, 405 NYS2d 504, the Appellate Division affirmed the trial court's order in a matrimonial action granting the wife exclusive possession of the marital residence pursuant to New York Domestic Relations Law §234 and an order of protection against the husband. The record revealed uncontested legal title to the house in the wife's name and contained sworn factual allegations by her of prior incidents of violence and abuse and a former protective order issued by Family Court pending the outcome of the matrimonial litigation.

In *Karakas v Karakas* (1989, 2d Dept) 154 App Div 2d 439, 546 NYS2d 11, the Appellate Division reversed on the law an order of the Supreme Court that granted the wife an order of protection and sua sponte directed that she have exclusive occupancy pendente lite of the marital residence. It held that because the affidavits submitted on the motion and cross motion for an order of protection were in sharp contrast evidentiary inquiry should have been made prior to any determination that it was

Where the party requesting an order of protection properly alleges but fails to establish by a fair preponderance of the evidence that the acts constitute a violation of any of the enumerated crimes or violations, the court may not grant an order of protection.<sup>10</sup> Moreover, no order of protection may direct any party to observe conditions of behavior unless the party requesting the order of protection has served and filed an action, proceeding, counter-claim or written motion and the court has made a finding on the record that such party is entitled to issuance of the order of protection.

### Burden of Proof

The petitioner has the burden of establishing the offense by a "fair preponderance of the evidence".<sup>11</sup> Only competent, material, and relevant evidence may be admitted in a fact-finding hearing.<sup>12</sup>

The terms "competent evidence", "competent proof" and "competent, material, and relevant evidence" appear throughout the Family Court Act.<sup>13</sup> "Competent evidence" is used interchangeably with the term "competent proof".<sup>14</sup> Similarly, the discussion of counsel, briefs, and matters outside the record cannot constitute a substitute for the testimony and proof needed to sustain a valid order.<sup>15</sup> Competency of evidence is a term that is often used as a synonym for the admissibility of evidence.<sup>16</sup>

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necessary for a spouse to vacate the marital residence or that "all contact" between the parties must be avoided.

<sup>10</sup> Id.

<sup>11</sup> Family Court Act § 832.

<sup>12</sup> Family Court Act § 834.

<sup>13</sup> The term "competant evidence" is found in Family Court Act § 625(a). "Competant proof" is found in Family Court Act §§441, 454 (1), 455 (2) and (5), 458-b(e), 776,777,778,779,780,846-a, 1071 and 1072. "Competant, material and relevant evidence" is found in Family Court Act §§ 342.2, 624, 744 and 824. The term "material and relevant evidence" is found in Family Court Act §§ 350.3, 624, 745 and 1048.

<sup>14</sup> In *Rensselaer Co. Dept. Soc. Serv. v. Cossart*, 38 A.D.2d 635, 327 N.Y.S.2d 117 (3rd Dept., 1971) the court held that the evidence presented must be competent. An unsworn statement by an attorney for the Department of Social Services was held not to be evidence.

<sup>15</sup> *Bolden v. Bolden*, 29 A.D.2d 520, 285 N.Y.S.2d 959 (1st Dept., 1967)

<sup>16</sup> *People v. Swamp*, 84 N.Y.2d 725, 730, 622 N.Y.S.2d 472, 474, 646 N.E.2d 774 (1995); *People v Brewster*, 100 AD3d 134, 473 NYS2d 984 (2d Dept), aff'd 63 NY2d

At a minimum, a hearing must consist of an adducement of proof coupled with an opportunity to rebut it (where the defendant appears).<sup>17</sup>

The Supreme Court, in deciding whether or not to grant an order of protection, must limit the decision to the enumerated crimes or violations listed in §812 of the Family Court Act. A request for a temporary or final order of protection in the Supreme Court that fails to allege any of the above enumerated crimes is defective.<sup>18</sup>

An order of protection may not be based on unpleaded allegations.<sup>19</sup>

### Defenses

Any defense, other than infancy, which would be available to the alleged family offense in a prosecution under the Penal Law, is available to the respondent in a family offense proceeding.<sup>20</sup> For example, the respondent may raise an alibi defense to a family offense petition<sup>21</sup> or raise the defense of justification.

There is no statute of limitations applicable to family offense proceedings under Family Court Act Article 8 and a family offense is not barred by the alleged defenses of laches or statute of limitations.<sup>22</sup>

### Element of Intent

There is abundant case law involving a defendant charged with the family offense

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419, 482 NYS2d 724 ; 5 N.Y.Prac., Evidence in New York State and Federal Courts § 6:2.

<sup>17</sup> Thompson v. Thompson (4 Dept. 2009) 59 A.D.3d 1104, 873 N.Y.S.2d 786

<sup>18</sup> See Peters v Peters (1984, 2d Dept) 100 App Div 2d 900, 474 NYS2d 785; Hayes v Hayes (1986) 131 Misc 2d 317, 500 NYS2d 475; People v Webb, 52 AD2d 8, 382 NYS2d 369 (3d Dept., 1976); Di Donna v Di Donna (1972) 72 Misc 2d 231, 339 NYS2d 592.

<sup>19</sup> Czop v Czop, 21 A.D.3d 958, 801 N.Y.S.2d 63 (2 Dept.)

<sup>20</sup> See, e.g., Hayes v. Hayes, 131 Misc. 2d 317, 500 N.Y.S.2d 475 (Fam. Ct. 1986).

<sup>21</sup> See, e.g., Gambler v. Ellwanger, 228 A.D.2d 504, 643 N.Y.S.2d 1014 (2d Dep't 1996)

<sup>22</sup> In re Ashley P., 31 A.D.3d 767, 819 N.Y.S.2d 103 (2d Dep't 2006).

of harassment, assault or menacing. Most of the family offenses require the petitioner to establish intent.

#### Element of Course of Conduct

An isolated incident is not a course of conduct.<sup>23</sup> An argument over something related to the parties is a legitimate topic for discussion. That the discussion became an argument, during which the respondent displayed some ugly behavior does not render the incident a family offense.<sup>24</sup>

To establish that the defendant “engage[d] in a course of conduct or repeatedly commit[ted] acts which alarm [ed] or seriously annoy[ed]’ another person”, there must be evidence that the defendant’s conduct was not an “isolated incident”.<sup>25</sup>

#### Relatively Contemporaneous and Imminence of Danger

Family Court Act § 812(1) provides, as of August 13, 2010, that a court shall not deny an order of protection, or dismiss a petition, solely on the basis that the acts or events alleged are not relatively contemporaneous with the date of the petition, the conclusion of the fact-finding or the conclusion of the dispositional hearing.

The issue in family offense matters is not the age of the threat but the imminence of the danger. In *Matter of Opray v Fitzharris*,<sup>26</sup> the wife initiated a family offense proceeding on or about April 7, 2010, alleging that the husband committed the family offenses of assault and aggravated harassment during various incidents occurring in April 2001 and December 2006, as well as on January 6, 2010, April 3, 2010, and April 6, 2010. The Appellate Division held that the Family Court properly dismissed allegations in the petition regarding incidents alleged to have occurred in April 2001 and December 2006. It pointed out that allegations of a family offense are not subject to the defense of laches or statute of limitations.<sup>27</sup> The issue in family offense matters is not the age of the threat but the imminence of the danger. Here, in addition to the

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<sup>23</sup> See *People v Hogan*, 172 Misc 2d 279 (Crim Ct, Kings County 1997), *affd* 181 Misc 2d 748 (App Term, 2d Dept 1998).

<sup>24</sup> See *People v Dietze*, 75 NY2d 47 (1989); *In re MT*, *supra*.

<sup>25</sup> *People v Wood*, 59 NY2d 811, 812 [1983]; *People v Valerio*, 60 NY2d 669 [1983]; *People v Chasserot*, 30 NY2d 898 [1972]; and see, *People v Malausky*, 127 Misc 2d 84 [Rochester City Ct 1985]; *People v Hotchkiss*, 59 Misc 2d 823 [Schuyler County Ct 1969].

<sup>26</sup> --- N.Y.S.2d ----, 2011 WL 1902204 (N.Y.A.D. 2 Dept.)

<sup>27</sup> citing *Matter of Ashley P.*, 31 AD3d 767, 769; *Matter of Nina K. v. Victor K.*, 195 Misc.2d 726, 727



remoteness of the allegations, the Family Court properly determined that they did not bear upon the existence of an "immediate and ongoing danger" to the wife or children. However, it found that the Family Court erred in determining that the wife failed to establish a prima facie case of aggravated harassment with respect to the incident alleged to have occurred on April 6, 2010. In determining a motion to dismiss for failure to establish a prima facie case, the evidence must be accepted as true and given the benefit of every reasonable inference which may be drawn therefrom. The question of credibility is irrelevant, and should not be considered. Here, viewing the wife's testimony in the light most favorable to her, and accepting her testimony as true, the wife failed to establish a prima facie case of assault in the third degree or aggravated harassment in the second degree with respect to the incident alleged to have occurred January 6, 2010. The wife did, however, establish a prima facie case of aggravated harassment in the second degree based on her testimony that during a telephone conversation on April 6, 2010, the husband threatened, among other things, to find her and kidnap the children (see Penal Law 240.30[1][a] ). The petition was reinstated and the matter remitted to the Family Court, for a new fact-finding hearing and for a new determination of the petition with respect to the allegations regarding the events of April 6, 2010.

#### Order of Protection - Conditions of Behavior

An order of protection issued by the Supreme Court may require any party: (a) to stay away from the home, school, business or place of employment of the child, other parent or any other party, and to stay away from any other specific location designated by the court; (b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods; (c) to refrain from committing a family offense, as defined in subdivision one of section 530.11 of the criminal procedure law, or any criminal offense against such child or against the other parent or against any person to whom custody of the child is awarded or from harassing, intimidating or threatening such persons; (d) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in a proceeding or action under this chapter or the family court act; (e) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child; (f) to pay the reasonable counsel fees and disbursements involved in obtaining or enforcing the order of the person who is protected by such order if such order is issued or enforced; or (g) to observe such other conditions as are necessary to further the purposes of protection.<sup>28</sup> The conditions of behavior must be reasonable.<sup>29</sup>

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<sup>28</sup> Domestic Relations Law § 240 (3)(a)(1)-(7); Domestic Relations Law § 252 (1)(a)-(g)

<sup>29</sup> FCA §842

The supreme court is authorized to make an order of protection in the final judgment in any matrimonial action, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. The order of protection may remain in effect after entry of a final matrimonial judgment and during the minority of any child whose custody or visitation is the subject of a provision of a final judgment or any order. An order of protection may be entered notwithstanding that the court for any reason whatsoever, other than lack of jurisdiction, refuses to grant the relief requested in the action or proceeding.<sup>30</sup>

An order of protection under Family Court Act §842 shall set forth reasonable conditions of behavior which may require the petitioner or the respondent:

- (a) to stay away from the home, school, business or place of employment of any other party, the other spouse, the other parent, or the child, and to stay away from any other specific location designated by the court, provided that the court shall make a determination, and shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this subdivision, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons;
- (b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;
- (c) to refrain from committing a family offense, as defined in subdivision one of section eight hundred twelve of this act, or any criminal offense against the child or against the other parent or against any person to whom custody of the child is awarded, or from harassing, intimidating or threatening such persons;
- (d) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in this proceeding or in any other proceeding or action under this act or the domestic relations law;
- (e) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child;
- (f) to pay the reasonable counsel fees and disbursements involved in obtaining or enforcing the order of the person who is protected by such order if such order is issued or enforced;
- (g) to require the respondent to participate in a batterer's education program designed to help end violent behavior, which may include referral to drug and alcohol counseling, and to pay the costs thereof if the person has the means to do so, provided however that nothing contained herein shall be deemed to require payment of the costs of any such program by the petitioner, the state or any political subdivision thereof; and
- (h) to provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the order.

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<sup>30</sup> Domestic Relations Law § 240 (3)(c); Domestic Relations Law § 252 (3)

(i) 1. to refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the petitioner or a minor child residing in the household.  
2. "Companion animal", as used in this section, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law.  
(j) to observe such other conditions as are necessary to further the purposes of protection.<sup>31</sup>

In addition to the foregoing provisions, the court may issue an order, pursuant to section two hundred twenty-seven-c of the real property law, authorizing the party for whose benefit any order of protection has been issued to terminate a lease or rental agreement pursuant to section two hundred twenty-seven-c of the real property law.<sup>32</sup>

Family Court Act § 842 provides that an order of protection under section 841 of the Family Court Act may set forth reasonable conditions of behavior to be observed for a period not in excess of two years by the petitioner or respondent or for a period not in excess of five years upon a finding by the court on the record of the existence of aggravating circumstances as defined in Family Court Act §827 (a) (vii).

For the purposes of section 842 aggravating circumstances is defined in Family Court Act §827 (a) (vii) to mean physical injury or serious physical injury to the petitioner caused by the respondent, the use of a dangerous instrument against the petitioner by the respondent, a history of repeated violations of prior orders of protection by the respondent, prior convictions for crimes against the petitioner by the respondent or the exposure of any family or household member to physical injury by the respondent and like incidents, behaviors and occurrences which to the court constitute an immediate and ongoing danger to the petitioner, or any member of the petitioner's family or household.<sup>33</sup>

Upon the issuance of an order of protection or temporary order of protection or upon a violation of such an order, the court may make an order in accordance with section 842-a of the family court act directing the surrender of firearms, revoking or

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<sup>31</sup> Family Court Act §842

<sup>32</sup> Family Court Act §842 as amended by L.2010, c. 341, § 6, eff. Aug. 13, 2010.

<sup>33</sup> Family Court Act § 842 as amended by Laws of 2003, Ch. 579, § 1.

In *Zirkind v Zirkind* 218 A.D.2d 745, 630 N.Y.S.2d 570 ( 2d Dept 1995) the court issued an order of protection directing the father not to interfere with the mother's custody of the children. The Appellate Division held that the order of protection which stated that it shall expire on March 27, 2006 failed to set forth a finding of aggravating circumstances. Thus, it may not be effective for a period in excess of one year and the court modified it to expire on January 19, 1996.

suspending a party's firearms license, and/or directing that the party be ineligible to receive a firearms license. Upon issuance of an order of protection or upon a finding of a violation thereof, the court also may direct payment of restitution in an amount not to exceed \$10,000 in accordance with section (e) of the family court act. An order of restitution may not be issued where the court determines that the party against whom the order would be issued has already compensated the injured party or where such compensation is incorporated in a final judgement or settlement of the action.<sup>34</sup>

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<sup>34</sup> DRL § 240 (9); DRL § 252(3)(e).