



Office of Children and Family Services

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Informational Letter

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To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies Executive Directors of Residential and Non-residential Programs for Victims of Domestic Violence
Issuing Division/Office:	Office of Children and Family Services/Division of Child Welfare and Community Services
Date:	January 6, 2020
Subject:	New York State Bail Reform Legislation and the Implications on Domestic Violence Situations
Suggested Distribution:	Directors of Social Services Program Directors of Residential Domestic Violence Programs Domestic Violence Advocates Domestic Violence Liaisons
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Attachments:	None

Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			Part JJJ of Chapter 59 of the Laws of 2019	Child Protective Services Manual	<i>Helpful Things to Say to or Ask a Non-Offending Parent (NOP)</i> <i>Practice Considerations for Locating and Engaging Fathers in Domestic Violence Situations</i>

I. Purpose

The purpose of this Informational Letter (INF) is to explain the impact New York State's recent bail reform legislation may have on child welfare practice and services provided by New York State Office of Children and Family Services (OCFS) licensed and/or approved domestic violence (DV) providers.

II. Background

On April 1, 2019, New York State passed criminal justice reform legislation that eliminates cash bail and pretrial detention for nearly all misdemeanors (except sex offense misdemeanors and criminal contempt) and nonviolent felony defendants. Part JJJ of Chapter 59 of the Laws of 2019, which amends various provisions of the Criminal Procedure Law, goes into effect on January 1, 2020. It is anticipated that the New York State bail reform will expedite the release of individuals that fit the criteria set forth by legislation.

Currently, after an arrest for crimes related to DV, a defendant is often taken into custody for the time between the arrest and arraignment. This is typically about 24 hours. The time spent in pretrial detention has served as a "cooling-off period" for the defendant and the victim. It has also allowed DV advocates and child protective services (CPS) caseworkers time to assess risk and develop and implement safety plans with the victim and children. With the elimination of bail and pretrial detention in most misdemeanor and non-violent felony cases, the time to engage in safety planning will be sharply reduced.

Under the new law, bail and pretrial detention will be eliminated for many crimes related to DV; instead, officers will issue a desk appearance ticket to the defendant. The appearance ticket allows the defendant to be released quickly and to return to court at a later date. In DV cases where the defendant is a family¹ or household member of the victim of the crime, sex offense cases, and cases where it is reasonably expected that an order of protection will be issued, officers are not required to issue a desk appearance ticket. If an order of protection is authorized by statute, it can be issued even if the defendant is released without other conditions.

III. Program Implications

With this streamlined time frame for release of defendants, there is a significant need for timely engagement with victims, including the provision of advocacy and safety planning services. Once the defendant is released back to the community, and potentially back to their home, there could be an increased safety risk for the victim and children. There may also be an increase in reports of abuse or maltreatment into the New York Statewide Central Register of Child Abuse and Maltreatment (SCR) resulting from the defendant's release and continued presence in the home.

¹ Family members can include parents, siblings, children, extended kin, married or formerly married individuals, those who share a child in common, and individuals who are or have been in an intimate relationship.

Even when the children are not the intended victims, DV is a risk element for maltreatment and abuse. Therefore, CPS staff need to consider any DV in their assessment of risk, and if necessary, address it in some manner to sufficiently reduce overall risk to children in the home.

Caseworkers should provide the victim with information on how to locate a DV shelter and/or DV services such as counseling. Referrals to DV advocates should also be considered. Caseworkers should also refer to the *Child Protective Services Manual* for further guidance on safety planning for families experiencing DV and reach out to the OCFS Bureau of Domestic Violence Prevention and Victim Support as needed.

CPS Safety Planning Tips

- It is important that CPS be knowledgeable about the dynamics of DV as well as adept at identifying its presence.
- Safety intervention strategies for families affected by DV may be different from the safety intervention strategies used in cases where DV is not a factor.
- Where the local department of social services does not have a DV colocation program, CPS should consider consulting with staff from a DV program in the community.
- Maintain an open dialogue with the victim as a safety plan is developed. The victim is the most knowledgeable about the DV offender's triggers and patterns of violence, which are critical in formulating a safety plan for the victim and children. The victim may have previously developed and instituted safety strategies, which should be reviewed and updated if necessary.
- The safety plan should be family-specific and consider the resources that are available locally.
- CPS may be reluctant to engage the DV offender during a CPS investigation. However, to effectively assess safety and risk to children, it is necessary to view the family holistically.

Legal Remedies

- If CPS determines that the DV offender poses an immediate risk to the child(ren) and the victim is willing to have the DV offender removed from the home, the intervention strategy may involve helping the victim to initiate proceedings against the DV offender in family court under Article 8 of the Family Court Act, or to press criminal charges against the DV offender.
- The victim may seek a temporary order of protection requiring the DV offender to remain away from the home or from the individuals in the family. If the victim does not want to or does not feel safe in pursuing such actions, but nonetheless is willing to have the DV offender removed from the home, CPS itself could seek such a temporary order of protection on behalf of the children from the family court under Article 10 of the Family Court Act.
- Removing the DV offender from the home will usually be less disruptive to the child(ren) than placing the child(ren) in foster care. Before taking this action, however, CPS should assess with the victim whether this course of action could place the victim and/or the children at an increased risk of harm.

Additional Resources

Helpful Things to Say to or Ask a Non-Offending Parent (NOP)

<https://ocfs.ny.gov/main/dv/Helpful%20Things%20to%20Say%20or%20Ask%20a%20Non-Offending%20Parent.pdf>

Practice Considerations for Locating and Engaging Fathers in Domestic Violence Situations

<http://ocfs.ny.gov/main/dv/Locating%20and%20Engaginng%20Fathers.pdf>

IV. Contacts

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