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STATE DIRECTOR'S MEMORANDUM # 2013-3

TO: All Probation Directors and Commissioners

**FROM: Robert M. Maccarone, Deputy Commissioner and
Director, Office of Probation and Correctional Alternatives *R.M.M.***

DATE: January 29, 2013

RE: Chapter 491 of the Laws of 2012—New Domestic Violence Laws

On October 25, 2012, Governor Andrew M. Cuomo signed into law Chapter 491 of the Laws of 2012 which strengthened several laws to better combat against domestic violence and hold offenders accountable. Among these were amendments to Criminal Procedure Law (CPL) 510.30, which now requires criminal courts to consider the individual's history of use or possession of firearms, and any violation of an Order of Protection issued by *any* court for the protection of a member or members of the same family or household as such term is defined in CPL 530.11(1), whether or not the order is currently in effect, when considering release on recognizance or setting bail requirements for those charged with a crime or crimes against a family or household member. Notably, this addition to the bail and recognizance statute does not require a conviction. Further, as courts do not have access to the Domestic Incident Report Repository (DIRR), information available to probation departments and the law enforcement community from the DIRR with respect to the defendant is relevant and would prove of assistance as such aforementioned factors must now be considered by judges when making a judicial determination in this area.

Chapter 491 is a significant change to current law because it requires the Court to consider the potential for ongoing domestic violence. This new provision was effective December 24, 2012. It also established Penal Law §240.75, the Class E Felony of Aggravated Family Offense, which enables law enforcement to prosecute as felons defendants who commit certain specified misdemeanor-level offenses and have a previous conviction for a specified misdemeanor or felony against a family or household member within the past five years. Importantly, the person against whom the current specified offense is committed may be different from the person against whom the previous specified offense was committed, and such

persons do not need to be members of the same family or household, but must have the family or household member relationship with the defendant. Further, PL §240.30 is expanded by amending the Class A Misdemeanor of Aggravated Harassment in the Second Degree to include when a defendant, with intent to harass, annoy, threaten or alarm, he/she strikes, shoves, kicks or otherwise subjects another person to physical contact causing physical injury to an individual, or to a family or household member of that individual. Although New York State already had a number of strong domestic violence protections, many domestic violence abusers repeatedly committed low-level offenses, which carried minor penalties, enabling them to continue subjecting their victims to fear and harm. These amendments enhance penalties to hold violators more accountable for their actions. The Aggravated Family Offense felony took effect on January 23, 2013 and the Aggravated Harassment misdemeanor was effective December 24, 2012.

Also, Executive Law §575(10) establishes a fatality review team within the Office for the Prevention of Domestic Violence for the purpose of analyzing domestic violence-related death or near death of individuals. The composition of this team is delineated and includes one representative of DCJS, OPCA, and several other state entities, including specific local representation. It also may include representatives from local probation departments, and other enumerated local entities. In investigating such incidents, to the extent consistent with federal law, the team upon request shall be provided “client-identifiable information and records” from a variety of sources including but not limited to certain law enforcement records, court records, probation and parole records, records from domestic violence programs, and from any relevant service provider, program or organization, and all other relevant records in the possession of state and local officials or agencies, provided there is no requirement to provide such information or records concerning a person charged, investigated or convicted in such death or near death in violation of such person’s attorney-client privilege. This provision takes effect April 23, 2013.

Attached please find a copy of the 2012 chapter law, a copy of CPL 510.30 with new provisions highlighted and an updated DIRR handout which reflects this new chapter law and replaces the handout disseminated last fall.

Attachments

- 1) Chapter 491 of the Laws of 2012
- 2) Criminal Procedure Law §510.30
- 3) DIRR Fact Sheet