

Victim's Rights and Remedies in New York State

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INTRODUCTION

New York State has an entire article of law dedicated to serving the interests of crime victims. The Fair Treatment Standards for Crime Victims is contained within Article 23 of the Executive Law. The purpose of that Act is to ensure that the State's criminal justice system has appropriate standards for the treatment of innocent victims of crime. Over the past several decades tremendous progress has been made in New York in adopting legal remedies and protections for crime victims.

The following is a summary of key victims' rights and remedies provisions and other important sections of New York State Law. All victims of crime have legal rights and remedies in New York State which are discussed in detail in the beginning sections of this summary. In addition, rights and remedies for special victim populations such as child victims, victims of sexual assault, domestic violence, stalking, human trafficking and homicide are detailed.

This summary is designed to provide legal advocates, crime victims and non-offending family members and others with critical information to assist in exercising the rights crime victims have been afforded under the laws of New York State. Since this is not a complete listing of all of the rights afforded to victims, consult with an attorney for additional references and resources.

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I. Financial Assistance for Crime Victims

The New York State Office of Victims Services (OVS) may be able to reimburse you for your direct out-of-pocket expenses caused by the crime. These expenses may include the repair or replacement of essential personal property, loss of earnings or support, medical bills, including the cost of counseling, vocational rehabilitation, crime scene cleanup or funeral bills. A claim form can be obtained from a police station, sheriff's office, District Attorney's (DA) office, local victim assistance program office, hospital emergency room, or you can request one from OVS from their website at: <http://www.ovs.ny.gov>. Since OVS supports nearly 200 victim assistance programs across New York State that can help you and your family access a wide range of valuable support services in your local community, you are encouraged to seek their assistance as they will help you complete the crime victim claim form and provide you and your family no-cost support services. To identify a victim service provider who can assist you, simply log onto <https://ovs.ny.gov/locate-program>.

You may have other options as well:

- You can file a civil lawsuit against your offender or a liable third party (e.g. if your landlord fails to supply sufficient lighting or other security measures) for recovery for your losses. If you decide to file a civil lawsuit, you will need to see an attorney who will explain your choices and advise you.
- If the crime occurred during the course of employment or arising out of employment, you may be eligible for workers' compensation benefits. The workers' compensation benefits you may be eligible to receive through the Workers' Compensation Board are: medical care, payment for lost wages, payment for permanent disability, rehabilitation or death benefits.
- If the crime is related to a vehicle, you may qualify for benefits under an automobile insurance policy.
- You may be eligible for compensation from other sources such as: mortgage insurance, homeowner's/renter's insurance, liability insurance, disability (private or state), veteran's benefits, social security benefits or a funeral/burial policy.

Reimbursement for Expenses Related to the Crime - Executive Law § 621, 626, 631

Establishes that certain victims of crime may be eligible for reimbursement from the New York State Office of Victims Services (OVS) for out-of-pocket expenses related to a crime committed against them. Victims include: (a) a person who suffers personal physical injury as a direct result of a crime; (b) a person who is the victim of either the crime of (1) unlawful imprisonment in the first degree as defined in section 135.10 of the penal law, (2) kidnapping in the second degree as defined in section 135.20 of the penal law, (3) kidnapping in the first degree as defined in section 135.25 of the penal law, (4) labor trafficking as defined in section 135.35 of the penal law, or (5) sex trafficking as defined in section 230.34 of the penal law; *or a person who has had a frivolous lawsuit filed against them.* A frivolous lawsuit means a lawsuit brought by the individual who committed a crime against the victim of the crime, found to be frivolous, meritless and commenced to harass, intimidate or menace the victim by a court and costs were

imposed upon the plaintiff pursuant to section eighty-three hundred three-a of the civil practice law and rules.

In addition, elderly, minor or disabled victims of crime who have not been physically injured as a direct result of the crime may be eligible for an award that includes the unreimbursed cost of repair or replacement of essential personal property that has been lost, damaged or destroyed as a direct result of a crime, certain transportation expenses, and counseling expenses.

The OVS offers compensation related to: personal injury, death and loss of essential personal property. The specific expenses OVS may cover include:

- Medical and counseling expenses
- Loss or damage of essential personal property (up to \$500, including \$100 for cash)
- Burial/funeral expenses (up to \$6,000)
- Lost wages or lost support (up to \$30,000)
 - An award for loss of earnings includes earnings lost by a parent or guardian as a result of the hospitalization of a child victim under age eighteen for injuries sustained as a direct result of a crime.
- Transportation (necessary court appearances for prosecution or to related medical appointments)
- Occupational/vocational rehabilitation
 - In addition to the medical or other services necessary as a result of the injury upon which the claim is based, an award may be made for rehabilitative occupational training for the purpose of job retraining or similar employment-oriented rehabilitative services based upon the claimant's medical and employment history. For the purpose of this subdivision, rehabilitative occupational training shall include but not be limited to educational training and expenses. An award for rehabilitative occupational training may be made to a victim, or to a family member of a victim where necessary as a direct result of a crime.
- Use of domestic violence shelters
- Crime scene clean-up (up to \$2,500)
- Good Samaritan property losses (up to \$5,000)
- Moving expenses (up to \$2,500)

Emergency Awards – Executive Law § 630

Certain crime victims may be eligible to receive emergency awards from OVS up to \$2,500.00. The amount of an emergency awards is deducted from any final award made to the claimant by OVS.

Expedited Claim Processing for Livery Cab Drivers – Executive Law § 627(f)

Requires OVS to review claims filed by livery operator within thirty days of receipt. Awards for loss of earnings for livery operator assault victims are for the period of time OVS determines that the livery operator assault victim is unable to work and has lost earnings as a result of such assault, in an amount not to exceed \$20,000.00.

Restitution and Reparation – Penal Law § 60.27

Restitution is compensation paid to a victim by the perpetrator of a criminal offense for the losses or injuries incurred as a result of the criminal offense. Restitution is not for payment of damages for future losses, mental anguish or “pain and suffering.” Pursuant to Penal Law § 60.27, the court is authorized to order a convicted defendant to pay restitution to a crime victim who has suffered injuries, economic losses or damages from the “fruits of the offense” or to pay reparation for the actual out of pocket loss.

At or before sentencing, the district attorney must advise the court that the victim seeks restitution or reparation, the extent of injury or economic loss or damage of the victim, and the amount of restitution or reparation sought by the victim. The court shall hear and consider the information presented by the district attorney in this regard. In that event, or when the victim impact statement reports that the victim seeks restitution or reparation, the court shall require, unless the interests of justice dictate otherwise, in addition to any of the dispositions authorized by this article that the defendant make restitution of the fruits of the offense and reparation for the actual out-of-pocket loss and, in the case of a violation of Penal Law section 190.80, 190.79, 190.78 (Identity Theft 1st, 2nd, and 3rd Degree), and section 190.83 or 190.82 (Unlawful Possession of Personal Identification Information 1st and 2nd Degree), any costs or losses incurred due to any adverse action taken against the victim. In the event that restitution or reparation are not ordered, the court shall clearly state its reasons on the record.

The amount of restitution or reparation required by the court will not exceed \$15,000.00 in the case of a felony, \$10,000.00 in the case of an offense other than a felony. However, the court in its discretion may impose restitution or reparation in excess of those amounts, provided however that the amount in excess must be limited to the return of the victim's property, including money, or the equivalent value thereof; and reimbursement for medical expenses actually incurred by the victim prior to sentencing as a result of the offense committed by the defendant. If an officer of a school district is convicted of violating any section of Penal Law Article 155-Larceny, where the victim of such crime is such officer's school district, the court may require an amount of restitution up to the full amount of the fruits of the offense or reparation up to the full amount of the actual out-of-pocket loss suffered by the victim.

Payments made as restitution or reparation does not limit, preclude or impair any liability for damages in any civil action or proceeding for an amount in excess of such payment. If the court requires restitution or reparation to be made to a person and that person dies prior to the completion of said restitution or reparation, the remaining payments must be made to the estate of the deceased.

When a person is convicted of harming an animal trained to aid a person with a disability in the second degree as defined in Penal Law §195.11, or harming an animal trained to aid a person with a disability in the first degree as defined in Penal Law §195.12, the court, in addition to any

other sentence, must order the payment of restitution to the person with a disability who was aided by such animal.

Eligible for Financial Assistance - Executive Law § 624

The following persons are eligible for awards:

- (a) a victim of a crime;
- (b) a surviving spouse, grandparent, parent, stepparent, guardian, brother, sister, stepbrother, stepsister, child, stepchild or grandchild of a victim of a crime who died as a direct result of such crime;
- (c) any other person dependent for his principal support upon a victim of a crime who died as a direct result of such crime;
- (d) any person who has paid for or incurred the burial expenses of a victim who died as a direct result of such crime, except such person shall not be eligible to receive an award for other than burial expenses unless otherwise eligible under paragraph (a), (b) or (c) of this subdivision;
- (e) an elderly victim of a crime;
- (f) a disabled victim of a crime;
- (g) a child victim of a crime;
- (h) a parent, stepparent, grandparent, guardian, brother, sister, stepbrother or stepsister of a child victim of a crime;
- (i) a surviving spouse of a crime victim who died from causes not directly related to the crime when such victim died prior to filing a claim with the office or subsequent to filing a claim but prior to the rendering of a decision by the office. Such award shall be limited to out-of-pocket loss incurred as a direct result of the crime; and
- (j) a spouse, child or stepchild of a victim of a crime who has sustained personal physical injury as a direct result of a crime.
- (k) a surviving spouse, child or stepchild of a victim of a crime who died as a direct result of such crime and where such crime occurred in the residence shared by such family member or members and the victim.

Who is Not Eligible for Financial Assistance - Executive Law § 624(2)

A person who is criminally responsible for the crime upon which a claim is based or an accomplice of such person shall not be eligible to receive an award with respect to such claim. A member of the family of a person criminally responsible for the crime upon which a claim is based or a member of the family of an accomplice of such person, shall be eligible to receive an award, unless the office determines pursuant to regulations promulgated to carry out the provisions and purposes of this article, that the person criminally responsible will receive substantial economic benefit or unjust enrichment from the compensation. In such circumstances the award may be reduced or structured in such way as to remove the substantial economic benefit or unjust enrichment to such person or the claim may be denied.

II. Bringing a Civil Action against a Perpetrator

Civil Practice Law and Rules § 213-b Action by a victim of a criminal offense

A victim may bring a civil action against the convicted perpetrator who caused them harm for any injury or loss resulting within seven years of the date of the crime. In the case of a defendant convicted of a specified serious crime, a victim may bring a civil action within 10 years of the date of the perpetrator's conviction.

Specified Crime § 632-a(1)(e)

Specified crime means:

- (A) a violent felony offense as defined in subdivision one of section 70.02 of the penal law;
- (B) a class B felony offense defined in the penal law;
- (C) an offense for which a merit time allowance may not be received against the sentence pursuant to paragraph (d) of subdivision one of section eight hundred three of the correction law;
- (D) an offense defined in the penal law that is titled in such law as a felony in the first degree;
- (E) grand larceny in the fourth degree as defined in subdivision six of section 155.30 or grand larceny in the second degree as defined in section 155.40 of the penal law;
- (F) criminal possession of stolen property in the second degree as defined in section 165.52 of the penal law; or
- (G) an offense in any jurisdiction which includes all of the essential elements of any of the crimes specified in clauses (A) through (F) of this subparagraph and either the crime victim as defined in subparagraph (i) of paragraph (d) of this subdivision was a resident of this state at the time of the commission of the offense or the act or acts constituting the crime occurred in whole or in part in this state.

A victim may also bring a civil proceeding to recover damages for Assault within one year of the commission of the crime (CPLR § 215(3)). The law also provides that a victim may sue the perpetrator within one year of the termination of the criminal action, whether it ended in conviction or acquittal (CPLR § 215(8)(a)).

Civil Action against Perpetrator for Profits of Crime – “Son of Sam Law” Executive Law §632-a

Provides that convicted criminal, during imprisonment, during supervision and in some cases after release, may be held accountable financially to the victims of their crimes. The New York State Office of Victim Services must be notified in writing when anyone knowingly contracts for, pays, or agrees to pay: 1) any profits from a crime to a person charged with or convicted of that crime (or their representative) or 2) any funds of a convicted person, where the conviction is for a specified crime and the value of the payments if funds exceeds \$10,000. The Office of Victim Services upon receipt of notice must notify all known crime victims. In addition, crime victims have a right to bring a civil action to recover money damages from a person convicted of a crime of which the crime victim is a victim within three years of the discovery of any profits from a crime or funds of a convicted person.

III. Notifications of Judicial Proceedings and Defendant's Status

Right to Be Notified of Judicial Proceedings and to be Notified of Defendant Status **Executive Law § 641(3), Criminal Procedure Law § 380.50 (4)(5)**

Victims, witnesses, relatives of those victims and witnesses who are minors, and relatives of homicide victims will be notified, if such persons provide the appropriate official with a current address and telephone number, either by phone or by mail, if possible, of judicial proceedings relating to their case, including:

- (a) the arrest of an accused;
- (b) the initial appearance of an accused before a judicial officer;
- (c) the release of an accused pending judicial proceedings; and
- (d) proceedings in the prosecution of the accused including entry of a plea of guilty, trial, sentencing, but prior to sentencing specific information shall be provided regarding the right to seek restitution and reparation, and where a term of imprisonment is imposed, specific information shall be provided regarding maximum and minimum terms of such imprisonment.

When a defendant is committed to the custody of the department of corrections and community supervision upon a sentence of imprisonment for conviction of a violent felony offense as defined in section 70.02 of the penal law or a felony defined in article one hundred twenty-five of such law, or a sex offense as defined in subdivision (p) of section 10.03 of the mental hygiene law, within sixty days of the imposition of sentence the prosecutor must provide the victim with a form on which the victim may indicate a demand to be informed of the escape, absconding, discharge, parole, conditional release, release to post-release supervision, transfer to the custody of the office of mental health pursuant to article ten of the mental hygiene law, or release from confinement under article ten of the mental hygiene law of the person so imprisoned. If the victim submits a completed form to the prosecutor, it shall be the duty of the prosecutor to mail promptly such form to the department of corrections and community supervision.

Right to Be Notified of Final Disposition - Criminal Procedure. Law § 440.50

Upon request, a victim of a crime in which the final disposition includes a conviction of a violent felony offense or a felony defined in article one hundred twenty-five of such law, the district attorney, within sixty days of the final disposition of the case, must inform the victim by letter of such final disposition. If the disposition results in the commitment of the defendant to the custody of the department of corrections and community supervision for an indeterminate sentence, the notice to the crime victim must also inform the victim of his or her right to submit a written, audiotaped, or videotaped victim impact statement to the department of corrections and community supervision or to meet personally with a member of the state board of parole at a time and place separate from the personal interview between a member or members of the board and the inmate and make such a statement. Victims can contact the Division of Parole's Victim Impact Unit at the toll free number 1-800-639- 2650.

Notification of Inmate Prison Status and Release Information

New York State Department of Correctional Services - VINE Program was enacted by the state Legislature in 1998 as part of Jenna's Law, which ended discretionary parole for first-time violent felony offenders. This law authorizes crime victims as well as all other New Yorkers to receive information relating to the crime, sentence and release date of persons serving sentences in state prison. Any member of the public may call 1-888-846-3469 to register for telephone notification of an offender's release from custody. In addition, the public may visit www.vinelink.com to register for e-mail notification of an offender's release from custody.

Notification on the Escape of a Mentally Ill Defendant – Criminal Procedure Law § 330.20(19)

Victims and any other person the facility believes to be in danger has the right to be notified by the mental health facility of the escape of a defendant in its custody.

IV. Crime Victim Rights during Judicial Proceedings and Access to Justice

Requirement for District Attorney to Consult with Victim Regarding Disposition of the Criminal Case – Executive Law § 642(1)

The victim of a violent felony offense, a felony involving physical injury to the victim, a felony involving property loss or damage in excess of two hundred fifty dollars, a felony involving attempted or threatened physical injury or property loss or damage in excess of two hundred fifty dollars or a felony involving larceny against the person shall, unless he or she refuses or is unable to cooperate or his or her whereabouts are unknown, be consulted by the district attorney in order to obtain the views of the victim regarding disposition of the criminal case by dismissal, plea of guilty or trial. In such a case in which the victim is a minor child, or in the case of a homicide, the district attorney shall, unless the family refuses or is unable to cooperate or his, her or their whereabouts are unknown, consult for such purpose with the family of the victim. In addition, the district attorney shall, unless he or she (or, in the case in which the victim is a minor child or a victim of homicide, his or her family) refuses or is unable to cooperate or his, her or their whereabouts are unknown, consult and obtain the views of the victim or family of the victim, as appropriate, concerning the release of the defendant in the victim's case pending judicial proceedings upon an indictment, and concerning the availability of sentencing alternatives such as community supervision and restitution from the defendant.

Victims Shall be Provided Assistance By Criminal Justice Professionals - Executive Law § 642

The victim or witness who so requests shall be assisted by law enforcement agencies and district attorneys in informing employers that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of that victim or witness from work. In addition, a victim or witness who, as a direct result of a crime or of cooperation with law enforcement agencies or the district attorney in the investigation or prosecution of a crime is unable to meet obligations to a creditor, creditors or others should be assisted by such agencies or the district attorney in providing to such creditor, creditors or others accurate information about the circumstances of the crime, including the nature of any loss or injury suffered by the victim, or about the victim's or witness' cooperation, where appropriate.

Return of Property - Executive Law § 642

Law enforcement agencies and district attorneys shall promptly return property held for evidentiary purposes unless there is a compelling reason for retaining it relating to proof at trial.

Free Copy of Police Report – Executive Law § 646

Entitles crime victims, regardless of physical injury, to a free copy of a police report of the crime.

Crime Victims Have a Right to Be Free from Intimidation - Penal Law §§ 215.15, 215.12, 215.13; C.P.L.R. §§ 530.12, 530.13; and Executive Law § 837(17).

Protects survivors and witnesses from being intimidated, threatened, harassed or having his or her property damaged by a defendant or anyone associated with the defendant. Crime victims have the legal right to be protected from threats, physical injury, or other kinds of intimidation. The police, sheriff's department, or District Attorney can offer advice regarding appropriate measures. If necessary, the court can issue an Order of Protection. In addition, witnesses and victims may receive assistance in relocating themselves and their families and may even get assistance to change their identity when necessary.

Secure Waiting Area – Executive Law § 642(2)

Requires that crime victims and other prosecution witnesses shall, where possible, be provided, when awaiting court appearances, a secure waiting area that is separate from the defendant and other witnesses.

Right to Submit a Victim Impact Statement Criminal Procedure Law §§380.50(2), 390.30, 390.50(2), 440.50; Executive Law §259-i.

A "pre-sentence report" is prepared by the county probation department when a defendant has been convicted of a felony, or a misdemeanor when the sentence includes probation or more than ninety days imprisonment. A pre-sentence report may contain a "victim impact statement" in which the victim's version of the offense and the extent of the victim's injury, out-of-pocket and other economic losses are summarized for the court. The victim impact statement sets forth the victim's views on the disposition of the criminal case, and the amount of restitution and reparation the victim seeks. The prosecutor and defense attorney may agree to waive the pre-sentence investigation under certain circumstances, and in the case of a misdemeanor conviction a "short form" report may be appropriate. So, it is important for the District Attorney to know a victim's views about sentencing. If a defendant is being sentenced for a felony conviction, the victim or a member of the victim's family may request to speak at the time the sentence is pronounced. The court must be given 10 days advance notice. The victim, or a member of the victim's family may speak on "any matter relevant to the question of sentence". The District Attorney's office or a crime victim advocate may assist a victim. If a person is a relative of a deceased victim, or a victim who is so disabled as to make it impracticable to appear in court in person, a designated person may speak on the victim's behalf. In addition, a victim may also submit a written, oral, audio-taped or videotaped victim impact statement to the Parole Board, which will be considered before any discretionary release on parole is granted.

Employers may not Unlawfully Penalize a Witness or a Victim - Penal Law § 215.14

Protects victims from being penalized or fired by an employer on account of their absence because they cooperated in prosecuting a criminal case by meeting with the district attorney, testifying at a criminal proceeding, or to exercise any other rights or protections afforded under the law. The victim who notifies his employer or agent of his intent to appear as a witness, to

consult with the district attorney, or to exercise his rights as provided in the criminal procedure law, the family court act and the executive law prior to the day of his attendance, shall not on account of his absence from employment by reason of such service be subject to discharge or penalty. However, an employer may withhold wages of any such employee during the period of such attendance. An employer who violates this provision may be found guilty of a class B misdemeanor.

Change of Name Protection Exemption from publication requirements - Civil Rights Law § 64-a.

If the court shall find that the publication of an applicant's change of name would jeopardize such applicant's personal safety, the Court may order the current name, new name and other identifying information sealed to prevent unauthorized use or disclosure. The court shall order the records of such change of name proceeding to be sealed, to be opened only by order of the court for good cause shown or at the request of the applicant.

New York State Sex Offender Registration Act - Correction Law Article 6-C

Enables survivors and the public to access information about sex offenders registered in New York State. The registry of Level 2 and Level 3 offenders can be accessed online at <http://www.criminaljustice.ny.gov/nsor/>. Information on Level 1 registrants in Nassau and Suffolk Counties can be accessed through Parents for Megan's Law at: <http://www.parentsformeganslaw.org/offender/offenderSearch.jsp>.

V. Medical and Health Services

Medical and Counseling Services – Executive Law §631

Provides that certain victims of crime and family members may qualify for medical and other related services not covered by insurance, including certain medical and counseling expenses.

Insurance Policies and Orders of Protection – Insurance Law §2612(f)(g)

Prohibits an insurance company who receives a valid order of protection against another person covered by the same policy from disclosing for the duration of the order, the address and telephone number of the victim, or of any person or entity providing covered services to the insured. If a child is the covered person, the right established by this subsection may be asserted by, and shall also extend to, the parent or guardian of the child.

VI. Special Provisions for Child Victims

In addition to the rights of adult crime victims, children who are victims of crime are afforded additional rights.

Fair treatment of child victims as witnesses – Executive Law § 642-a (and Criminal Procedure Law §§190.30(4); 190.32; Social Services Law §422 and 423)

To the extent permitted by law, criminal justice agencies, crime victim-related agencies, social services agencies and the courts shall comply with the following guidelines in their treatment of child victims:

- 1) To minimize the number of times a child victim is called upon to recite the events of the case and to foster a feeling of trust and confidence in the child victim, whenever practicable and where one exists, a multi-disciplinary team as established pursuant to subdivision six of section four hundred twenty-three of the social services law and/or a child advocacy center shall be used for the investigation and prosecution of child abuse cases involving abuse of a child, as described in paragraph (i), (ii) or (iii) of subdivision (e) of section one thousand twelve of the family court act, sexual abuse of a child or the death of a child.
- 2) Whenever practicable, the same prosecutor should handle all aspects of a case involving an alleged child victim.
- 3) To minimize the time during which a child victim must endure the stress of his involvement in the proceedings, the court should take appropriate action to ensure a speedy trial in all proceedings involving an alleged child victim. In ruling on any motion or request for a delay or continuance of a proceeding involving an alleged child victim, the court should consider and give weight to any potential adverse impact the delay or continuance may have on the well-being of the child.
- 4) The judge presiding should be sensitive to the psychological and emotional stress a child witness may undergo when testifying.
- 5) In accordance with the provisions of article sixty-five of the criminal procedure law, when appropriate, a child witness as defined in subdivision one of section 65.00 of such law should be permitted to testify via live, two-way closed-circuit television.
- 6) In accordance with the provisions of section 190.32 of the criminal procedure law, a person supportive of the “child witness” or “special witness” as defined in such section should be permitted to be present and accessible to a child witness at all times during his testimony, although the person supportive of the child witness should not be permitted to influence the child’s testimony.
- 7) A child witness should be permitted in the discretion of the court to use anatomically correct dolls and drawings during his testimony.

VII. Special Provisions for Sexual Assault Victims

Rape Shield Law –Criminal Procedure Law - §§60.43, 60.42

Past Sexual Conduct Criminal Procedure Law - §60.43

Evidence of the victim's sexual conduct, including the past sexual conduct of a deceased victim, may not be admitted in a prosecution for any offense, attempt to commit an offense or conspiracy to commit an offense defined in the penal law unless such evidence is determined by the court to be relevant and admissible in the interests of justice, after an offer of proof by the proponent of such evidence outside the hearing of the jury, or such hearing as the court may require, and a statement by the court of its findings of fact essential to its determination.

Admissibility of evidence of victim's sexual conduct in sex offense cases §60.42

Evidence of a victim's sexual conduct is not admissible in a prosecution for an offense or an attempt to commit an offense defined in article 130.00 of the penal law (Sex Offenses) unless such evidence:

1. proves or tends to prove specific instances of the victim's prior sexual conduct with the accused; or
2. proves or tends to prove that the victim has been convicted of an offense under section 230.00 of the penal law (Prostitution Offenses) within three years prior to the sex offense which is the subject of the prosecution; or
3. rebutts evidence introduced by the people of the victim's failure to engage in sexual intercourse, oral sexual conduct, anal sexual conduct or sexual contact during a given period of time; or
4. rebutts evidence introduced by the people which proves or tends to prove that the accused is the cause of pregnancy or disease of the victim, or the source of semen found in the victim; or
5. is determined by the court after an offer of proof by the accused outside the hearing of the jury, or such hearing as the court may require, and a statement by the court of its findings of fact essential to its determination, to be relevant and admissible in the interests of justice.

Manner of Dress – Criminal Procedure Law § 60.48

Evidence of the manner in which the victim was dressed at the time of the commission of an offense may not be admitted in a prosecution for any offense, or an attempt to commit an offense, defined in article 130.00 of the penal law, unless such evidence is determined by the court to be relevant and admissible in the interests of justice, after an offer of proof by the proponent of such evidence outside the hearing of the jury, or such hearing as the court may require, and a statement by the court of its findings of fact essential to its determination.

Rape Crisis Counselor Confidentiality – Civil Practice Law §4510

Recognizes confidential communication between a rape crisis counselor and a client, except when the client has authorized disclosure, reveals intent to commit a crime or a harmful act or files charges against the counselor of the rape crisis program and such action or proceeding involves confidential communications between the client and the rape crisis counselor..

A rape crisis counselor shall not be required to disclose a communication made by his or her client to him or her, or advice given thereon, in the course of his or her services nor shall any clerk, stenographer or other person working for the same program as the rape crisis counselor or for the rape crisis counselor be allowed to disclose any such communication or advice given thereon nor shall any records made in the course of the services given to the client or recording of any communications made by or to a client be required to be disclosed, nor shall the client be compelled to disclose such communication or records except as summarized above.

The privilege may only be waived by the client, the personal representative of a deceased client, or, in the case of a client who has been adjudicated incompetent or for whom a conservator has been appointed, the committee or conservator.

In addition, a client who, for the purposes of obtaining compensation under article twenty-two of the executive law or insurance benefits, authorizes the disclosure of any privileged communication to an employee of the office of victim services or an insurance representative shall not be deemed to have waived the privilege created by this section.

HIV Testing - New York Criminal Procedure Law - §210.16

In a case where an indictment or a superior court information has been filed with a superior court which charges the defendant with a felony offense enumerated in any section of article 130.00 of the penal law where an act of “sexual intercourse”, “oral sexual conduct” or “anal sexual conduct,” as those terms are defined in section 130.00 of the penal law, is required as an essential element for the commission thereof, the court shall, upon a request of the victim within six months of the date of the crimes charged, order that the defendant submit to human immunodeficiency virus (HIV) related testing. Testing of a defendant shall be ordered when the result would provide medical benefit to the victim or a psychological benefit to the victim. Medical benefit shall be found when the following elements are satisfied: (i) a decision is pending about beginning, continuing, or discontinuing a medical intervention for the victim; and

(ii) the result of an HIV test of the accused could affect that decision, and could provide relevant information beyond that which would be provided by an HIV test of the victim. If testing the defendant would provide medical benefit to the victim or a psychological benefit to the victim, then the testing is to be conducted by a state, county, or local public health officer designated by the order. Test results, which shall not be disclosed to the court, shall be communicated to the defendant and the victim named in the order in accordance with the provisions of section 2785-a of the public health law.

Requirement of HIV Related Testing in Certain cases - New York Criminal Procedure Law §§ 210.16, 390.15

In any case where the defendant is convicted of a felony offense enumerated in any section of article 130.00 of the penal law, or any subdivision of section 130.20 of such law, where an act of “sexual intercourse”, “oral sexual conduct” or “anal sexual conduct,” as those terms are defined in section 130.00 of the penal law, is required as an essential element for the commission thereof, the court must, upon a request of the victim (if the victim is an infant or incompetent person, the application may also be made by a representative), order that the defendant submit to human immunodeficiency (HIV) related testing. The testing is to be conducted by a state, county, or local public health officer designated by the order. Test results, which shall not be disclosed to the court, shall be communicated to the defendant and the victim named in the order in accordance with the provisions of section 2785-a of the public health law, but such results and disclosure need not be completed prior to the imposition of sentence.

Any request made by the victim pursuant to this section must be in writing, filed with the court and provided by the court to the defendant or his or her counsel. The request must be filed with the court prior to or within ten days after entry of the defendant's conviction; provided that, for good cause shown, the court may permit such request to be filed at any time before sentence is imposed.

Disclosure of Victim Identity Prohibited – Civil Rights Law §50-b

Provides that no report, paper, picture, photograph, court file or other documents, in the custody or possession of any public officer or employee, which identifies such a victim shall be made available for public inspection. Generally, requires that the identity of such victim or HIV transmission related offenses be kept confidential, except for official purposes, for any person charged with the commission of the offense, and to any person who notifies the victim and demonstrates to the satisfaction of the court to have good cause for access. A court may order restrictions upon any authorized disclosure to preserve the identity and confidentiality of the victim.

Violation of Victim Identity Confidentiality – Civil Rights Law § 50-c

Creates a right to bring an action for a survivor of a sex offense or alleged transmission of HIV to recover damages suffered for wrongful disclosure of identity. In any action brought under this section, the court may award reasonable attorney's fees to a prevailing plaintiff.

Venereal disease; person knowing himself to be infected – New York Public Health Law -§ 2307.

Any person who, knowing himself or herself to be infected with an infectious venereal disease, has sexual intercourse with another shall be guilty of a misdemeanor.

Prohibition Against Polygraph Test and Stress Evaluation Criminal Procedure Law §160.45

Forbids a district attorney, police officer or employee of any law enforcement agency from requesting or requiring any victim of a sexual assault crime to submit to any polygraph test or psychological stress evaluator examination.

Statute of Limitations for Filing a Civil Claim Against Perpetrator of a Serious Offenses – Civil Practice Law and Rules §§ 213-c and 215(8)

Enables victims to file a civil lawsuit against their attacker to recover for physical, psychological or other injury or condition suffered by a person as a result of acts by such defendant of rape in the first degree as defined in section 130.35 of the penal law, or criminal sexual act in the first degree as defined in section 130.50 of the penal law, or aggravated sexual abuse in the first degree as defined in section 130.70 of the penal law, or course of sexual conduct against a child in the first degree as defined in section 130.75 of the penal law may be brought within five years.

As used in this section, the term “defendant” shall mean only a person who commits the acts described in this section or who, in a criminal proceeding, could be charged with criminal liability for the commission of such acts pursuant to section 20.00 of the penal law and shall not apply to any related civil claim or cause of action arising from such acts. Nothing in this section shall be construed to require that a criminal charge be brought or a criminal conviction be obtained as a condition of bringing a civil cause of action or receiving a civil judgment pursuant to this section or be construed to require that any of the rules governing a criminal proceeding be applicable to any such civil action.

Statute of Limitations for Filing a Civil Claim Against Perpetrator of Serious Offenses – Civil Practice Law and Rules §215(8)(b)

Whenever it is shown that a criminal action against the same defendant has been commenced with respect to the event or occurrence from which a claim governed by this section arises, and such criminal action is for rape in the first degree as defined in section 130.35 of the penal law, or criminal sexual act in the first degree as defined in section 130.50 of the penal law, or aggravated sexual abuse in the first degree as defined in section 130.70 of the penal law, or course of sexual conduct against a child in the first degree as defined in section 130.75 of the penal law, the plaintiff shall have at least five years from the termination of the criminal action as defined in section 1.20 of the criminal procedure law in which to commence the civil action, notwithstanding that the time in which to commence such action has already expired or has less than a year remaining.

Medical and Health Services:

Treatment of Sexual Assault Survivors and Forensic Examination – Executive Law §631(13) and Public Health Law §2505-i(4-b)

Authorizes any New York state accredited hospital, accredited sexual assault examiner program, or licensed health care provider to provide services to any sexual assault survivor, including but not limited to a health care forensic examination in accordance with the sex offense evidence collection protocol and standards established by the department of health free of charge and to directly bill the New York State Office of Victim Services.

Thus, practitioners provide victims of rape and/or a sexual offenses with a free forensic rape examination which includes any laboratory tests and necessary pharmaceuticals; including but not limited to HIV post-exposure prophylaxis provided by a hospital emergency room at the time of the forensic rape examination pursuant to paragraph (c) of subdivision one of section twenty-eight hundred five-i of the public health law. Follow-up HIV post-exposure prophylaxis costs shall continue to be reimbursed according to established office procedure.

Sexual assault survivors must be advised orally and in writing that he or she may decline to provide or assign any private health insurance benefits if he or she believes that the provision of such information would substantially interfere with his or her personal privacy or safety and in such event, the sexual assault forensic exam fee shall be paid by the New York State Office of Victim Services.

Selected hospitals in the state serve as the sites of twenty-four hour sexual assault forensic examiner programs and shall also provide treatment to the victim as follows:

- (1) The victim shall, absent exigent circumstances, be met by a sexual assault forensic examiner within sixty minutes of arriving at the hospital, who shall be a nurse practitioner, physician assistant, registered nurse or physician specially trained in forensic examination of sexual offense victims and the preservation of forensic evidence in such cases and certified as qualified to provide such services pursuant to regulations promulgated by the commissioner. Such program shall assure that such a specially-trained forensic examiner is on-call and available on a twenty-four hour a day basis every day of the year.
- (2) An examination of the victim shall be performed promptly by such forensic examiner in a private room designated for such examinations. An obstetrician/gynecologist or other appropriate medical doctor shall be readily available to the forensic examiner if there is a need for more specialized medical evaluation or treatment.
- (3) Promptly after the examination is completed, the victim shall be permitted to shower, be provided with a change of clothing, and receive follow-up information, counseling, medical treatment and referrals for same.

Emergency Contraception – Public Health Law §2805-p

Every hospital providing emergency treatment to a rape survivor must provide such survivor with written information relating to emergency contraception; and orally inform such survivor of the availability of emergency contraception, its use and efficacy and upon request provide emergency contraception unless contraindicated.

Collection of Forensic Evidence - Public Health Law § 2805-I (1)(2) Treatment of sexual offense victims and maintenance of evidence in a sexual offense

Hospitals providing treatment to alleged victims of sexual offenses must maintain sexual offense evidence and the chain of custody of such forensic evidence. Additionally hospitals must contact a rape crisis or victim assistance organization, if any, that provides victim assistance to the geographic area served by that hospital to establish the coordination of non-medical services to sexual offense victims who request such coordination and services.

Hospitals treating alleged sexual offense victims must also offer and make available appropriate HIV post-exposure treatment therapies; including a seven day starter pack of HIV post-exposure prophylaxis, in cases where it has been determined, in accordance with guidelines issued by the commissioner, that a significant exposure to HIV has occurred, and informing the victim that payment assistance for such therapies may be available from the office of victim services pursuant to the provisions of article twenty-two of the executive law. With the consent of the victim of a sexual assault, the hospital emergency room department shall provide or arrange for an appointment for medical follow-up related to HIV post-exposure prophylaxis and other care as appropriate.

The sexual offense evidence shall be collected and kept in a locked separate and secure area for not less than thirty days unless: (a) such evidence is not privileged and the police request its surrender before that time, which request shall be complied with; or (b) such evidence is privileged and (i) the alleged sexual offense victim nevertheless gives permission to turn such privileged evidence over to the police before that time, or (ii) the alleged sexual offense victim signs a statement directing the hospital to not collect and keep such privileged evidence, which direction shall be complied with. The sexual offense evidence shall include, but not be limited to, slides, cotton swabs, clothing and other items. Where appropriate such items must be refrigerated and the clothes and swabs must be dried, stored in paper bags and labeled. Each item of evidence shall be marked and logged with a code number corresponding to the patient's medical record. The alleged sexual offense victim shall be notified that after thirty days, the refrigerated evidence will be discarded in compliance with state and local health codes and the alleged sexual offense victim's clothes will be returned to the alleged sexual offense victim upon request.

If an alleged sex offense victim is admitted or treatment commences, the hospital shall advise the victim of the availability of the services of a local rape crisis or victim assistance organization, if any, to accompany the victim through the sexual offense examination. If after receiving such advice the sexual offense victim wishes the presence of a rape crisis or victim assistance advocate, the hospital shall contact the appropriate organization and request that one be provided, provided, however, that if in the professional judgment of the treating practitioner a delay in treatment is detrimental to the provision of medical treatment, then examination or treatment need not be delayed pending the arrival of such advocate and further provided that the presence or continued presence of such advocate does not interfere with the provision of necessary medical care to the victim.

VIII. Special Provisions for Domestic Violence Victims

Information and Notification:

Notice of Shelter, Services and Legal Rights - Criminal Procedure Law § 530.11(6); Family Court Act § 812(5)

Requires every police officer, peace officer or district attorney investigating a family offense under this article shall advise the victim of the availability of a shelter or other services in the community, and shall immediately give the victim written notice of the legal rights and remedies available including the right to file an order or protection, medical treatment and to have police accompaniment to a place of safety. The notice must be available in English and Spanish.

Crime Victim Notice to Family Offense Victims - Public Health Law § 2803-p

Requires every hospital having maternity and newborn services to provide information concerning family violence to parents of newborn infants at any time prior to the discharge of the mother. Such information shall also be provided by every diagnostic and treatment center offering prenatal care services to women upon an initial prenatal care visit.

Financial Assistance:

Emergency Awards and Awards for Relocation Expenses – Executive Law § 630,631(2)

Provides emergency awards from the Office of Victim Services to victims when undue hardship will result to the claimant if immediate payment is not made. The amount of each emergency award does not exceed twenty-five hundred dollars, which is deducted from any final award made. Local crime victim service providers are authorized to provide emergency awards to crime victims for essential personal property, medical treatment, shelter costs, security services, counseling and transportation the total amount of such emergency awards not to exceed five hundred dollars. Provides that victims of crime, including domestic violence may seek reasonable relocation expenses not exceeding twenty-five hundred dollars from the Office of Victim Services.

Reimbursement for Custody Hearings – Domestic Relations Law § 77-k

Entitles the prevailing party necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be inappropriate. A party fleeing an incident of domestic violence or mistreatment or abuse of a child or sibling will not be assessed these costs, unless the court finds otherwise.

Protection from Housing Discrimination and Eviction – Real Property Law §227-d; Real Property Actions and Proceedings Law §744

Prohibits discrimination in housing based on domestic violence status. Includes renting, terms or conditions of rental, and eviction. A violation may result in a misdemeanor conviction and a fine of not less than one thousand dollars and not more than two thousand dollars for each offense.

Early Lease Termination – New York Real Property Law § 227-c

Provides early termination rights for tenants who are victims of domestic violence, provided that specified conditions are met (such as the tenant securing a court order of protection).

Waivers to Public Assistance Requirements and Record Confidentiality – Family Violence Option – Social Services Law § 349-a

Enables applicants and recipients of public assistance who are screened as domestic violence victims to obtain a waiver from program requirements when certain requirements make it more difficult for the individual or the individual's children to escape from domestic violence, or subject the individual, or the individual's children, to further risk of domestic violence. Such waivers shall, to the extent permitted by federal law, include, but not be limited to, residency requirements, child support cooperation requirements and employment and training requirements; provided, however, that exemptions from the sixty month time limit on receipt of benefits under the federal temporary assistance to needy families block grant program shall be available only when the individual would not be required to participate in work or training activities because of an independently verified physical or mental impairment resulting from domestic violence, anticipated to last for three months or longer, or if the individual is unable to work because of the need to care for a dependent child who is disabled as a result of domestic violence. Victims of domestic violence may be exempted from the application of subdivision two of section three hundred forty-nine of this article on the basis of hardship. Information with respect to victims of domestic violence shall not be released to any outside party or parties or other governmental agencies unless the information is required to be disclosed by law, or unless authorized in writing by the applicant or recipient.

Unemployment Benefits – Labor Law § 593

Provides that a victim of domestic violence may qualify for unemployment benefits if the domestic violence, verified by reasonable and confidential documentation caused the individual reasonably to believe that such individual's continued employment would jeopardize his or her safety or the safety of any member of his or her immediate family.

Access to Justice:

Domestic Violence Incident Report (DIR) Must Be Prepared and Notifications Required – Criminal Procedure Law §§ 140.10; Executive Law §§ 214-b(a), 837(15)

Law enforcement officers, upon investigating a report of a crime or offense between members of the same family or household must prepare, file, and translate, in accordance with section 214-b or 840 of the executive law, a written report of the incident, on a form promulgated pursuant to § 837 of the executive law, including statements made by the victim and by any witnesses, and make any additional reports required by local law enforcement policy or regulations. The report must be prepared and filed, whether or not an arrest is made and the law enforcement agency must retain the report for a period of not less than four years. Where the reported incident involved an offense committed against a person who is 65 years of age or older a copy of the report must be sent to the New York state committee for the coordination of police services to elderly persons. Where the reported incident involved an offense committed by an individual known by the law enforcement officer to be under probation or parole supervision, he or she shall transmit a copy of the report as soon as practicable to the supervising probation department or the department of corrections and community supervision.

The “domestic violence incident report form” must be used by state and local law enforcement agencies in the reporting, recording and investigation of all alleged incidents of domestic violence, regardless of whether an arrest is made as a result of such investigation and must be prepared in multiple parts, one of which shall be immediately provided to the victim, and shall include designated spaces for: the recordation of the results of the investigation by the law enforcement agency and the basis for any action taken; the recordation of a victim's allegations of domestic violence; the age and gender of the victim and the alleged offender or offenders; and immediately thereunder a space on which the victim may sign and verify such victim's allegations. Such form shall also include, but not be limited to spaces to identify:

- (a) what other services or agencies, including but not limited to medical, shelter, advocacy and other supportive services are or have previously been involved with the victim; and
- (b) whether the victim has been provided with the written notice described in subdivision five of section 812 the family court act and subdivision six of section 530.11 of the criminal procedure law.

Amendments became effective February 18, 2016.

Mandatory Arrest – Criminal Procedure Law 140.10 (4)

Primary Physical Aggressor - 140.10 (4)(c)

[Sunsets Sept. 1, 2017]

A police officer must arrest a person, and shall not attempt to reconcile the parties or mediate, where such officer has reasonable cause to believe that:

- (a) a felony, (other than specified larceny offenses) has been committed by such person against a member of the same family or household, as member of the same family or household is defined in subdivision one of section 530.11 of this chapter; or

(b) a duly served order of protection or special order of conditions issued pursuant to subparagraph (i) or (ii) of paragraph (o) of subdivision one of section 330.20 of this chapter is in effect, or an order of which the respondent or defendant has actual knowledge because he or she was present in court when such order was issued, where the order appears to have been issued by a court of competent jurisdiction of this or another state, territorial or tribal jurisdiction; and

(i) Such order directs that the respondent or defendant stay away from persons on whose behalf the order of protection or special order of conditions has been issued and the respondent or defendant committed an act or acts in violation of such “stay away” provision of such order; or

(ii) The respondent or defendant commits a family offense as defined in subdivision one of section 812 of the family court act or subdivision one of section 530.11 of this chapter in violation of such order of protection or special order of conditions. Applies only to orders of protection issued pursuant to sections 240 and 252 of the domestic relations law, articles four, five, six and eight of the family court act and section 530.12 of this chapter, special orders of conditions issued pursuant to subparagraph (i) or (ii) of paragraph (o) of subdivision one of section 330.20 of this chapter insofar as they involve a victim or victims of domestic violence as defined by subdivision one of section 459-a of the social services law or a designated witness or witnesses to such domestic violence, and to orders of protection issued by courts of competent jurisdiction in another state, territorial or tribal jurisdiction.

(c) a misdemeanor constituting a family offense, as described in subdivision one of section 530.11 of this chapter and section eight hundred twelve of the family court act, has been committed by such person against such family or household member, unless the victim requests otherwise. The officer shall neither inquire as to whether the victim seeks an arrest of such person nor threaten the arrest of any person for the purpose of discouraging requests for police intervention. Notwithstanding the foregoing, when an officer has reasonable cause to believe that more than one family or household member has committed such a misdemeanor, the officer is not required to arrest each such person. In such circumstances, the officer shall attempt to identify and arrest the primary physical aggressor after considering: (i) the comparative extent of any injuries inflicted by and between the parties; (ii) whether any such person is threatening or has threatened future harm against another party or another family or household member; (iii) whether any such person has a prior history of domestic violence that the officer can reasonably ascertain; and (iv) whether any such person acted defensively to protect himself or herself from injury. The officer shall evaluate each complaint separately to determine who is the primary physical aggressor and shall not base the decision to arrest or not to arrest on the willingness of a person to testify or otherwise participate in a judicial proceeding.

Orders of Protection for Family and Non-Family Offenses – Criminal Procedure Law §§ 530.11, 530.12, 530.13; Family Court Act §§ 828, 842; Domestic Relations Law §§ 240, 252

Provides for orders of protection or restraining orders requiring the abuser to refrain from certain behaviors and/or comply with specific conditions. Generally, relief may require the defendant/respondent to: stay away the home, school, business or place of employment of the family or household

member or of any designated witness; to refrain from contacting the victim; refrain from future acts of harassment, intimidation, violence against the child or family or household member or against any person to whom custody of the child is awarded, or from harassing, intimidating or threatening such persons; to refrain from acts of commission or omission that create an unreasonable risk to the health, safety and welfare of a child, family or household member's life or health; to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings; to refrain from intentionally injuring or killing, without justification, any companion animal the defendant knows to be owned, possessed, leased, kept or held by the victim or a minor child residing in the household. In addition relief may require the respondent to physically leave the home; not possess any firearms; pay restitution; continue health insurance coverage; pay for property damage; refrain from using alcohol or drugs; and adhere to visitation restrictions.

Depending upon the relationship (current or former spouse, related by blood or marriage, persons having a child in common, or someone with who the victim has/had an intimate relationship), a victim can seek relief from criminal court and from family court if the offense committed is a family offense. The minimum duration of an order of protection varies depending on the nature of the case and the issuing court.

Temporary Orders of Protection and Emergency Orders for Family and Non-Family Offenses - Criminal Procedure Law §§ 530.11, 530.12, 530.13; Domestic Relations Law §§ 240; Family Court Act §§ 153-c, 828

Enables victims to obtain an emergency ex-parte order of protection (where only the victim is present in court, not the defendant/respondent) if they can demonstrate that they need immediate protection and that the court should temporarily dispense with the other party's due process rights including the right to notice. This order lasts until a full court hearing is held where the alleged abuser has an opportunity to be present. The defendant/respondent can request that the order be vacated or modified. To be valid, a temporary order must be served on the defendant/respondent, who should also be served with notice of the full court hearing.

Family Offenses – Criminal Procedure Law §§530.11(1), 530.12; Family Court Act §§154-d, 812.00(1)

The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the 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, strangulation in the first degree, strangulation in the second degree, criminal obstruction of breathing or blood circulation, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree or coercion in the second degree as set forth in subdivisions one, two and three of section 135.60 of the penal law between spouses or former spouses, or between parent and child or

between members of the same family or household except that if the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law, then the family court shall have exclusive jurisdiction over such proceeding. For purposes of this section, “disorderly conduct” includes disorderly conduct not in a public place.

Members of the same family or household” with respect to a proceeding in the criminal courts means:

- (a) persons related by consanguinity or affinity;
- (b) persons legally married to one another;
- (c) persons formerly married to one another regardless of whether they still reside in the same household;
- (d) persons who have a child in common, regardless of whether such persons have been married or have lived together at any time; and
- (e) 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. Factors the court may consider in determining whether a relationship is an “intimate relationship” 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. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an “intimate relationship”.

Copies of Orders of Protection – Criminal Procedure Law §§530.12(8), 530.13(6); Family Court Act §168(1)

Requires the court to issue the complainant, the defendant, the defense counsel and any other person affected by the order, a copy of the order of protection.

Enforcement of Out-of-State Orders of Protection in Domestic Violence Cases – Criminal Procedure Law 530.11(5); Family Court Act §154-e

Requires that an out-of-state court, territorial or tribal order of protection be enforced as if it were a New York State order of protection for as long as the order remains in effect in the issuing jurisdiction.

Statewide Registry of Orders of Protection and Arrest Warrants – Executive Law §221-a; Criminal Procedure Law §530.13

Established a statewide computerized registry of all orders of protection issued pursuant to articles four (Support Proceedings), five (Paternity), six (Adoption, Guardianship and Custody), eight (Family Offense Proceedings) and ten (Child Protective Proceedings) of the family court act, section 530.12 of the criminal procedure law (Protection for Victims of Family Offenses) and, insofar as they involve victims of domestic violence as defined by section 459-a of the social services law (Domestic Violence Prevention Act), section 530.13 of the criminal procedure law (Protections for Victims of Crimes other than Family Offenses) and sections 240

(Custody and Child Support) and 252 (Divorce, Separation and Annulment) of the domestic relations law, and orders of protection issued by courts of competent jurisdiction in another state, territorial or tribal jurisdiction, special orders of conditions issued pursuant to subparagraph (i) or (ii) of paragraph (o) of subdivision one of section 330.20 of the criminal procedure law (Procedure following verdict or plea of not responsible by reason of mental disease or defect) insofar as they involve a victim or victims of domestic violence or a designated witness or witnesses to such domestic violence, and all warrants issued pursuant to sections 153 (Subpoena, warrant and other process to compel attendance) and 827 (Issuance of warrant; certificate of warrant) of the family court act, and arrest and bench warrants as defined in subdivisions 28, 29, and 30 of section 1.20 of the criminal procedure law, insofar as such warrants pertain to orders of protection or temporary orders of protection; provided, however, that warrants issued pursuant to section 153 of the family court act pertaining to articles 3 (Juvenile Delinquency) and 7 (Proceedings Concerning Whether a Person is in Need of Supervision) of such act and section 530.13 of the criminal procedure law (Protections for Victims of Crimes other than Family Offenses) shall not be included in the registry. The superintendent shall establish and maintain such registry for the purposes of ascertaining the existence of orders of protection, temporary orders of protection, warrants and special orders of conditions, and for enforcing the provisions of paragraph (b) of subdivision 4 of section 140.10 of the criminal procedure law.

A person entitled to protection under an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, may file such order without fee with the clerk of a court in this state having jurisdiction over family, criminal or matrimonial proceedings . Upon such filing, information regarding such order shall be transmitted to the statewide computerized registry.

Amendments became effective Feb. 16, 2016.

Violations of Orders of Protection – Criminal Procedure Law §§140.10, 530.12(11); Penal Law 215.51, 215.52; Family Court Act §846-a

Requires the police to arrest the abuser where there is evidence that gives them reasonable cause to believe that the order of protection or special order of conditions was violated by the abuser by either failing to stay away or by committing another family offense. This applies to out-of-state orders. Where the defendant/respondent violated an order of protection, the defendant/respondent may be charged with contempt of court in criminal court. Additionally, a violation of an order of protection may result in the court (family/criminal court) revoking an order of recognizance or bail; revoking a conditional discharge or probation; modifying an existing order or temporary order; making a new order; ordering the respondent to pay the victim's counsel fees, ordering the revocation of a firearm license and may arrange for the immediate surrender and disposal of any firearm such respondent owns or possesses (in some cases this is mandatory); and/or ordering the respondent/defendant to jail.

Assignment of Counsel– Family Court Act §262; Judiciary Law §35

Requires the family court to appoint an attorney to represent indigent persons in court proceedings involving a family offense, custody and visitation, child welfare and contempt matters, and paternity proceedings. Whenever the supreme court exercises jurisdiction over a matter which the family court could have exercised jurisdiction (e.g., custody, order of protection issues in marital dissolution cases) had such action been filed in family court, supreme court must appoint counsel for the indigent person.

Uniform Child Custody Jurisdiction and Enforcement Act – Domestic Relations Law §75

Provides a mechanism to obtain and enforce orders of custody and visitation across state lines and to do so in a manner that ensures that the safety of the children is paramount and that victims of domestic violence and child abuse are protected. It is further the intent of the legislature that this article be construed so as to ensure that custody and visitation by perpetrators of domestic violence or homicide of a parent, legal custodian, legal guardian, sibling, half-sibling or step-sibling of a child is restricted pursuant to subdivision one-c of section two hundred forty of this chapter and section one thousand eighty-five of the family court act.

Parent Who Flees To Avoid Domestic Violence – Domestic Relations Law §75

In making a custody determination under this section, a court shall not consider as a factor weighing against the petitioner any taking of the child, or retention of the child after a visit or other temporary relinquishment of physical custody, from the person who has legal custody, if there is evidence that the taking or retention of the child was to protect the petitioner from domestic violence or the child or sibling from mistreatment or abuse.

Temporary Emergency Child Custody – Domestic Relations Law §76-c

A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child, a sibling or parent of the child. The court must coordinate with any other state where a similar proceeding has been commenced.

Best Interests of the Child – Domestic Relations Law §240; Family Court Act §§447, 467, 549, 651, 652

Requires that the court consider the effect of such domestic violence upon the best interests of the child, together with such other facts and circumstances as the court deems relevant in making a decision about the best interests of the child and state on the record how such findings, facts and circumstances factored into the decision. If a parent makes a good faith allegation based on a reasonable belief supported by facts that the child is the victim of child abuse, child neglect, or the effects of domestic violence, and if that parent acts lawfully and in good faith in response to that reasonable belief to protect the child or seek treatment for the child, then that parent shall not be deprived of custody, visitation or contact with the child, or restricted in custody, visitation or

contact, based solely on that belief or the reasonable actions taken based on that belief. If an allegation that a child is abused is supported by a preponderance of the evidence, then the court shall consider such evidence of abuse in determining the visitation arrangement that is in the best interest of the child, and the court shall not place a child in the custody of a parent who presents a substantial risk of harm to that child, and shall state on the record how such findings were factored into the determination.

Statute of Limitation for Filing a Civil Claim Against Perpetrator– Civil Practice Law and Rules §215(3)(8)

A victim may bring a civil proceeding to recover damages for assault within one year of the commission of the crime. Additionally, the law provides that a victim may sue the perpetrator within one year of the termination of the criminal action, whether it ended in conviction or acquittal.

If such criminal action is for rape in the first degree as defined in section 130.35 of the penal law, or criminal sexual act in the first degree as defined in section 130.50 of the penal law, or aggravated sexual abuse in the first degree as defined in section 130.70 of the penal law, or course of sexual conduct against a child in the first degree as defined in section 130.75 of the penal law, the plaintiff shall have at least five years from the termination of the criminal action as defined in section 1.20 of the criminal procedure law in which to commence the civil action, notwithstanding that the time in which to commence such action has already expired or has less than a year remaining.

Safety Provisions Firearm Suspension and Revocation and Orders of Protection – Family Court Act §§842-a, 846-a; Penal Law §400.00; Criminal Procedure Law §530.14; Domestic Relations Law §§240, 252

Upon issuance of a temporary order of protection, the court is required to suspend a firearm license, order respondent ineligible for such a license and order the immediate surrender of any firearm owned or possessed by the respondent if the court has good cause to believe: that the respondent has a prior violent felony conviction; or a prior violation of an order of protection involving the infliction of serious injury, the use or threatened use of a deadly weapon or dangerous instrument, or behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or the defendant has a prior conviction of stalking and the court shall where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the temporary order of protection is issued, suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed..

Revocation or suspension of firearms license and ineligibility for such a license upon the issuance of an order of protection. Whenever an order of protection is issued pursuant to section

841 of this part, or pursuant to article four, five, six, seven or ten of this act:(a) the court shall revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed where the court finds that the conduct which resulted in the issuance of the order of protection involved (i) the infliction of physical injury, as defined in subdivision nine of section 10.00 of the penal law, (ii) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; and(b) the court shall, where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection is issued, (i) revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed or (ii) suspend or continue to suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed.

Revocation or suspension of firearms license and ineligibility for such a license upon a finding of a willful failure to obey an order of protection or temporary order of protection. Whenever a respondent has been found, pursuant to section eight hundred forty-six-a of this part to have willfully failed to obey an order of protection or temporary order of protection issued pursuant to this act or the domestic relations law, or by this court or by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, in addition to any other remedies available pursuant to section eight hundred forty-six-a of this part:(a) the court shall revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed where the willful failure to obey such order involves (i) the infliction of physical injury, as defined in subdivision nine of section 10.00 of the penal law, (ii) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iv) behavior constituting stalking in the first degree as defined in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law; and(b) the court shall where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection was issued, (i) revoke any such existing license

possessed by the respondent, order the respondent ineligible for such a license, whether or not the respondent possesses such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms owned or possessed or (ii) suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed.

Where an order to surrender one or more firearms has been issued, the temporary order of protection or order of protection shall specify the place where such firearms shall be surrendered, shall specify a date and time by which the surrender shall be completed and, to the extent possible, shall describe such firearms to be surrendered and shall direct the authority receiving such surrendered firearms to immediately notify the court of such surrender.

Emergency Shelter for Victims of Domestic Violence – Social Services Law §459-b, §131-u

Requires the Department of Social Services to provide necessary and available emergency shelter and services at a residential program for victims of domestic violence. Domestic violence victims are not required to be recipients or applicants of public assistance to benefit from emergency shelter provision.

Special Ballots for Victims of Domestic Violence – Election Law §11-306

Requires the Board of Elections to allow a victim of domestic violence who has been forced to leave her or his residence to cast and submit their special ballot a week before the election and up until the polls close.

Confidentiality of Personal and Residential Program Information – Domestic Relations Law §254; Family Court Act §154-b

Whether or not an order of protection has been issued, authorizes the court to keep any party's current address, telephone number, including the address of a domestic violence residential program or shelter, confidential in any proceeding involving paternity, custody, divorce, separation or annulment, family offenses, child welfare, or a person in need of supervision. The court is required to designate another person such as the court clerk or another disinterested person to receive any court papers, if the court finds that such information poses a risk to the health or safety of the adult and/or child victim. The court must seal the victim's location and not disclose this information in any pleadings or document.

Confidentiality of Insurance Information – Insurance Law §2612(f),(g)

Prohibits an insurance company from disclosing the address and telephone number of a person covered by the insurance company or of any person or entity providing covered services to the insured , upon receipt of a valid order of protection against another person covered by the same

policy. If a child is the covered person, the right established by this subsection may be asserted by, and shall also extend to, the parent or guardian of the child.

Medical and Health Services:

Non-residential Services – Social Services Law §459-c

Requires the Department of Social Services and social services districts to offer and provide nonresidential services including but not limited to, counseling, information and referral services, advocacy, counseling, community education and outreach activities and hotline services to a victim of domestic violence whether or not she or he is eligible for public assistance.

A social services district may provide such non-residential services directly or may purchase such services from a not-for-profit organization operating a residential program and/or a non-residential program for victims of domestic violence.

Family Violence Education to New Parents – Public Health Law §2803-p(2)

Every hospital having maternity and newborn services must provide information concerning family violence to parents of newborn infants at any time prior to the discharge of the mother. Such information shall also be provided by every diagnostic and treatment center offering prenatal care services to women upon an initial prenatal care visit.

Partner Notification of HIV – Public Health Law §§2133, 2137

Authorizes local health departments to notify the spouse and any known sexual partner of any person testing positive for HIV. Requires the Department of Health, OPDV and statewide organizations and community based organizations to develop a protocol for the identification and screening of victims of domestic violence who may either be a protected individual or a contact as used in this title.

Reporting Abuses of Persons Receiving Care or Services in Residential Health Care Facilities – Public Health Law §2803-d

The following persons are required to report if they have reasonable cause to believe that a person receiving care or services in a residential health care facility has been physically abused, mistreated or neglected by other than a person receiving care or services in the facility:

Any residential health care facility operator or employee of such facility, any person who, or employee of any corporation, partnership, organization or other entity which, is under contract to provide patient care services in such facility, and any nursing home administrator, physician, medical examiner, coroner, physician's associate, specialist's assistant, osteopath, chiropractor, physical therapist, occupational therapist, registered

professional nurse, licensed practical nurse, dentist, podiatrist, optometrist, pharmacist, psychologist, licensed master social worker, licensed clinical social worker, speech pathologist and audiologist.

In addition to those persons required to report suspected physical abuse, mistreatment or neglect of persons receiving care or services in residential health care facilities, any other person may make such a report if he or she has reasonable cause to believe that a person receiving care or services has been physically abused, mistreated or neglected in the facility.

Workplace Provisions:

Reasonable Accommodations for Disability – Executive Law §§292(21-e), 296(1)

It shall be an unlawful discriminatory practice for an employer or licensing agency, because of an individual's age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

The American Disabilities Act requires employers to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an undue hardship on the operation of the employers business. The term “reasonable accommodation” means actions taken which permit an employee, prospective employee or member with a disability, or a pregnancy-related condition, to perform in a reasonable manner the activities involved in the job or occupation sought or held and include, but are not limited to, provision of an accessible worksite, acquisition or modification of equipment, support services for persons with impaired hearing or vision, job restructuring and modified work schedules; provided, however, that such actions do not impose an undue hardship on the business, program or enterprise of the entity from which action is requested.

Insurance Discrimination – Insurance Law §2612

Prevents insurance companies from discriminating against victims of domestic violence by classifying domestic violence as a pre-existing condition which may result in insurance companies charging a higher premium or denying or canceling coverage. If a policy change is made, the insurer must notify the consumer of its specific reasons which must be based on underwriting criteria related to anticipated or actual loss.

Workplace Violence Policy – Executive Law §575; Labor Law §27-b

Requires OPDV to develop and provide a model domestic violence employee awareness and assistance policy for businesses throughout New York State. In addition, public employers must devise and implement programs and training to prevent workplace violence, including the measures employees can take to protect themselves, appropriate work practices, emergency procedures and the use of security alarms and other devices.

Protections Against Employment Termination or Penalties – Penal Law §215.14

Prohibits an employer from penalizing or discharging a victim who takes time off for various legal procedures or to exercise their rights such as appearing as a witness, consulting with the district attorney or obtaining an order of protection. The victim must give prior day notice and the employer may withhold wages. The subjection of an employee to discharge or penalty on account of his absence from employment by reason of his required attendance as a witness at a criminal proceeding or consultation with the district attorney or exercise of his rights as provided under law shall constitute a class B misdemeanor.

IX. Special Provisions for Stalking Victims

Compensation – Executive Law §631 (11,12)

Establishes award eligibility for individuals who were victims of all stalking offenses, certain menacing offenses, criminal obstruction of breathing or blood circulation offenses, harassment offenses, aggravated harassment offenses and criminal contempt who have not been physically injured as a direct result of such crime. Under this category, victims shall only be eligible for an award that includes loss of earning or support, the unreimbursed cost of repair or replacement of essential personal property that has been lost, damaged or destroyed as a direct result of such crime, the unreimbursed cost for security devices to enhance the personal protection of such victim, transportation expenses incurred for necessary court expenses in connection with the prosecution of such crime, the unreimbursed costs of counseling provided to such victim on account of mental or emotional stress resulting from the incident in which the crime occurred, reasonable relocation expenses, and for occupational or job training.

Establishes eligibility for compensation from the Office of Victims Services (OVS) for certain victims kidnapping and unlawful imprisonment who have not been physically injured as a direct result of such crime. Awards are only for loss of earnings or support and the unreimbursed costs of counseling provided to such victim on account of mental or emotional stress resulting from the incident in which the crime occurred.

Emergency Awards and Awards for Relocation Expenses – Executive Law §§630, 631(2,12)

Provides emergency awards from OVS to victims where undue hardship will result to the claimant if immediate payment is not made. The total amount of emergency awards to each claimant cannot exceed \$2,500, which is deducted from any final award made and the excess of the amount of any such emergency award over the amount of the final award, or the full amount of any emergency awards if no final award is made, shall be repaid by the claimant to the office.

Local crime victim service programs are authorized to provide emergency awards to victims for essential personal property, medical treatment, shelter costs, security services, counseling and transportation the total amount of such emergency awards not to exceed five hundred dollars. These programs shall be reimbursed by the office, pursuant to the provisions of this article, if it is subsequently determined that the victim is an eligible claimant. Enables victims of stalking and certain other crimes to seek reasonable relocation expenses not exceeding \$2,500 from OVS.

Access to Justice:

Anti-Stalking Laws – Penal Law §§120.45, 120.50, 120.55, 120.60

Criminalizes the act of stalking by focusing on perpetrator's conduct and the harm or potential harm to the victim, such as fear of material harm to health, safety or property and threats to the victim's job or career. Provisions cover not only the victim but her or his family and acquaintances and provides for increased penalties for repeat offenders.

Stalking by a Family Member – Family Court Act §812; Criminal Procedure Law §§530.11, 530.12

Provides for jurisdiction in both family and criminal court for stalking offenses. When stalking or harassment is carried out against a family member (current or former spouse, related by blood or marriage, persons having a child in common, or someone with who the victim has/had an intimate relationship) both the family court and the criminal court have concurrent jurisdiction to hear the case and issue orders of protection, among other powers.

Suspension/Revocation of Firearm License – Criminal Procedure Law §530.14; Family Court Act §842-a

When issuing a temporary or permanent order of protection, the court must suspend, revoke and request the immediate surrender of all firearms owned and in possession of a defendant where such person has a prior conviction for stalking. Where the failure to obey an order of protection involves behavior constituting stalking, the court shall also revoke any existing firearm license of defendant, order defendant ineligible for such license and seek the immediate surrender of any firearm. The court may also do so if it finds substantial risk that the defendant may use or threaten to use a firearm unlawfully against the person(s) for whose safety an order of protection was issued pursuant to *Criminal Procedure Law §§530.12, 530.13*.

Warrants for Eavesdropping and Surveillance – Criminal Procedure Law §700.05(8)(p)

Includes stalking in the first and second degree among those offenses for which a court has authority to issue eavesdropping and video surveillance warrants to law enforcement.

Unlawful Surveillance – Penal Law §§250.45, 250.50

Criminalizes acts of unlawful video voyeurism and surveillance. It is unlawful for someone to intentionally and for the purpose of degrading or abusing a person, or for his or her own or another person's sexual arousal, amusement, entertainment or profit or for no legitimate purpose (there is a rebuttable presumption against a legitimate purpose), use or install a digital,

mechanical, or other electronic imaging device to secretly view, broadcast or record images of sexual or intimate body parts of an unknowing person at a time and place where that person has a reasonable expectation of privacy.

Dissemination of an Unlawful Surveillance Image

A person is guilty of dissemination of an unlawful surveillance image in the second degree when he or she, with knowledge of the unlawful conduct by which an image or images of the sexual or other intimate parts of another person or persons were obtained and such unlawful conduct would satisfy the essential elements of the crime of unlawful surveillance in the first or second degree, intentionally disseminates such image or images. Second degree unlawful dissemination is a class A misdemeanor and first degree is a class D Felony. A person is guilty of first degree unlawful surveillance if previously convicted within the past ten years of unlawful surveillance.

Unlawful Practice of Eavesdropping – Penal Law §250.05

Criminalizes eavesdropping when a person unlawfully engages in wiretapping, mechanical overhearing of a conversation, or intercepting or accessing of an electronic communication.

Aggravated Harassment – Penal Law §240.30

Makes it a misdemeanor for a person, with intent to harass, communicates or causes a communication to be initiated, anonymously or otherwise, by telephone, by computer or any other electronic means, or by mail, or by transmitting or delivering any other form of communication, a threat to cause physical harm to, or unlawful harm to the property of, such person, or a member of such person's same family or household.

X. Special Provisions for Human Trafficking Victims

Services for Victims of Human Trafficking – New York State Social Services Law - Article 10-D

The New York State Trafficking Victims Protection and Justice Act (TVPA)

The Act was signed into law on October 21, 2015, Chapter 368 and became effective on January 19, 2016. The TCPA Improved the State's response to human trafficking. The Act increases the accountability of buyers and traffickers by adding new offenses to address patronizing a minor for prostitution and increasing penalties for sex trafficking. It eliminated the term “prostitute” in the Penal Law and replaced it with “patronizing a person for prostitution.” Required the development of policies and materials for new and veteran police officers to use in assisting trafficking victims. The Act amended multiple sections of Penal Law §§60.13, 70.02(1)(a) & (c), 70.80(1)(a), 135.35, add 135.37, 460.10(1)(a), 700.05(8)(b) & (h), add 230.01, 230.02(1), 230.03(2), 230.04 - 230.10, add 230.11 – 230.13, 230.15(1) & (2), 230.19(1), 230.25(1), 230.30, 230.32, 230.33, 230.35, 230.40, 240.37(2), 380.50(6), 440.10(1)(i), 483-bb add (c), Criminal Procedure Law §§380.50, 440.10, 700.05; Social Services Law §§483-bb & 483-cc; Civil PLR §212; Mental Hygiene Law §10.03; Correction Law §§168-a & 168-d; Vehicle & Traffic Law §509-cc, add §510-d; Public Health Law §2324-a; Real Property Actions & Proceedings Law §715; Real Property Law §231; Executive Law §840, add §214-d; §14 of Chapter 74 of 2007.

The crime of human trafficking is astounding in its breadth and in the depth of need it creates for victims. Under New York State Social Services Law, trafficking is an act of forced labor or sexual servitude under specific means, for the benefit of the perpetrator. Any law enforcement agent or social or legal service provider can make a referral for services if he or she believes a person to be trafficked.

Through OTDA (The office of temporary and disability assistance), New York State funds the Response to Human Trafficking Program (RHTP), which provides case management and referral services to adult foreign-born, New York State confirmed trafficked persons who, by virtue of the lack of an eligible immigration status are therefore not otherwise eligible for any mainstream benefits and/or services. The focus is on those who would otherwise have no access to needed services: those who have not yet been certified by the federal government and those that are beginning to work in coordination with an investigation or prosecution and have been confirmed as a victim by OTDA/BRIA and DCJS. Services may include shelter/rental assistance, health assessment, medical care, mental health counseling, legal services, food assistance and other identified service needs.

In providing such assistance, the office of temporary and disability assistance may enter into contracts with non-government organizations for providing services to pre-certified victims of human trafficking as defined in subdivision (b) of section four hundred eighty-three-aa of this article, insofar as funds are available for that purpose. Such services may include, but are not limited to, case management, emergency temporary housing, health care, mental health counseling, drug addiction screening and treatment, language interpretation and translation services, English language instruction, job training and placement assistance, post-employment services for job retention, and services to assist the individual and any of his or her family members to establish a permanent residence in New York state or the United States. Nothing in this section shall preclude the office of temporary and disability assistance, or any local social services district, from providing human trafficking victims who are United States citizens or human trafficking victims who meet the criteria pursuant to section one hundred twenty-two of this chapter with any benefits or services for which they otherwise may be eligible.

Cause of Action Established for Human Trafficking Victims - N.Y. Soc. Serv. Law § 483-bb(c)

Effective Jan. 19, 2016: An individual who is a victim of the conduct prohibited by section 230.33, 230.34, 135.35 or 135.37 of the penal law may bring a civil action against the perpetrator or whoever knowingly advances or profits from, or whoever should have known he or she was advancing or profiting from, an act in violation of section 230.33, 230.34, 135.35 or 135.37 of the penal law to recover damages and reasonable attorney's fees.

XI. Special Provisions and Case Law for Homicide Victims

N.Y. Est. Powers & Trusts Law § 4-1.6 Disqualification of joint tenant in certain instances

Notwithstanding any other provision of law to the contrary, a joint tenant convicted of murder in the second degree as defined in section 125.25 of the penal law or murder in the first degree as defined in section 125.27 of the penal law of another joint tenant shall not be entitled to the distribution of any monies in a joint bank account created or contributed to by the deceased joint tenant, except for those monies contributed by the convicted joint tenant.

Upon the conviction of such joint tenant of first or second degree murder and upon application by the prosecuting attorney, the court, as part of its sentence, shall issue an order directing the amount of any joint bank account to be distributed pursuant to the provisions of this section from the convicted joint tenant and to the deceased joint tenant's estate. The court and the prosecuting attorney shall each have the power to subpoena records of a banking institution to determine the amount of money in such bank account and by whom deposits were made. The court shall also have the power to freeze such account upon application by the prosecuting attorney during the pendency of a trial for first or second degree murder. If, upon receipt of such court orders described in this section, the banking institution holding monies in such joint account complies with the terms of the order, such banking institution shall be held free from all liability for the distribution of such funds as were in such joint account. In the absence of actual or constructive notice of such order, the banking institution holding monies in such account shall be held harmless for distributing the money according to its ordinary course of business. For purposes of this section, the term banking institution shall have the same meaning as provided for in paragraph (b) of subdivision three of section nine-f of the banking law.

Perpetrators of Homicide Attempting to Inherit

Riggs v. Palmer, 22 N.E. 188, 190 (N.Y. 1889)

No one shall be permitted to profit by his own fraud, or to take advantage of his own wrong, or to found any claim upon his own iniquity, or to acquire property by his own crime.

In re Demesyieux, 978 N.Y.S.2d 608, 615 (N.Y. Sur. 2013)

The Nassau County Court adopts the Brewer Rule. A person found not responsible for a crime due to mental disease or defect who has the ability to recognize that her conduct was morally wrong when undertaken shall not financially benefit from that action.

XII. Safety and Other Preventive Measures

“Enough is Enough” Overview

This legislation was first proposed by Governor Cuomo and will extend the preventive policy and protections adopted by SUNY campuses to all university campuses statewide. Specifically, the new law requires private colleges in New York State to adopt or implement:

- A uniform definition of affirmative consent, defining consent as a knowing, voluntary, and mutual decision among all participants to engage in sexual activity;
- An amnesty policy, to ensure that students reporting incidents of sexual assault or other sexual violence are granted immunity for certain campus policy violations, such as drug and alcohol use;
- A Students’ Bill of Rights, which campuses will be required to distribute to all students in order to specifically inform sexual violence victims of their legal rights and how they may access appropriate resources. The Bill of Rights clearly states that students are given the right to know they can report sexual assaults to outside law enforcement, including the State Police;
- Comprehensive training requirements for administrators, staff, and students, including at new student orientations.;
- Reporting requirements for campuses to annually submit aggregate data on reported incidents of sexual violence and their adjudication and handling to the State Education Department;

Additionally, the new law includes:

- The creation of a new unit within the State Police called the “sexual assault victims unit,” with a focus on advanced training in responding to sexual assaults and related crimes that shall also provide assistance to campus police or local law enforcement, as well as training to college campus communities;
- A commitment of \$10 million to help combat campus sexual assault through various partners, split in the following manner: \$4.5 million to rape crisis centers to provide services and resources to students, \$4.5 million to the State Police to create sexual assault victims unit, and \$1 million to colleges and universities; and
- A requirement for first responders to notify survivors of their right to contact outside law enforcement.

“ENOUGH IS ENOUGH”

Education Law Title VII Article 129-B: Implementation by Colleges and Universities of Sexual Assault, Dating Violence, Domestic Violence and Stalking Prevention and Response Policies and Procedures

Enacted in July of 2015, the new law requires all colleges to adopt a set of comprehensive procedures and guidelines, including a uniform definition of affirmative consent, a statewide amnesty policy, and expanded access to law enforcement to ensure the safety of all students attending colleges in New York State.

General Requirements - New York Education Law § 6440

1. Every institution shall:

- a. adopt written rules implementing this article by amending its code of conduct or other comparable policies;
- b. annually file with the department on or before the first day of July, beginning in two thousand sixteen, a certificate of compliance with the provisions of this article; and
- c. file a copy of all written rules and policies adopted as required in this article with the department on or before the first day of July, two thousand sixteen, and once every ten years thereafter, except that the second filing shall coincide with the required filing under article one hundred twenty-nine-A of this chapter, and continue on the same cycle thereafter.

2. All institutional services and protections afforded to reporting individuals under this article shall be available to all students and applicable to conduct that has a reasonable connection to that institution. When such conduct involves students or employees from two or more institutions, such institutions may work collaboratively to address the conduct provided that such collaboration complies with the Family Educational Rights and Privacy Act codified at 20 U.S.C. 1232g; 34 C.F.R. Part 99.

3. If an institution fails to file a certificate of compliance on or before September first beginning in 2016, such institution shall be ineligible to receive state aid or assistance until it files such a certificate. The department shall conduct audits of institutions by random selection, at any time after September first, two thousand sixteen, to ensure compliance with the provisions of this article, and shall post information and statistics regarding compliance with this article on the department's website.

4. A copy of such rules and policies shall be provided by each institution to all students enrolled in said institution using a method and manner appropriate to its institutional culture. Each institution shall also post such rules and policies on its website in an easily accessible manner to the public.

Every Institution Must Adopt Affirmative Consent to Sexual Activity Definition § 6441-N.Y. Educ. Law § 6441

1. Every institution shall adopt the following definition of affirmative consent as part of its code of conduct: “Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.”

2. Each institution's code of conduct shall reflect the following principles as guidance for the institution's community:

a. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.

b. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

c. Consent may be initially given but withdrawn at any time.

d. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

e. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.

f. When consent is withdrawn or can no longer be given, sexual activity must stop.

Every Institution Must Adopt and Implement a Policy for alcohol and/or drug use § 6442-N.Y. Educ. Law

Every institution shall adopt and implement the following policy as part of its code of conduct:

“The health and safety of every student at the [Institution] is of utmost importance.

[Institution] recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to

domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. [Institution] strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials.

A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to [Institution's] officials or law enforcement will not be subject to [Institution's] code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.”

Every Institution Must Adopt and Implement a Student’s Bill of Rights - Education Law § 6443

Every institution shall adopt and implement the following “Students' Bill of Rights” as part of its code of conduct which shall be distributed annually to students, made available on each institution's website, posted in campus residence halls and campus centers, and shall include links or information to file a report and seek a response, pursuant to section 6444 of this article, and the options for confidential disclosure pursuant to section 6446:

“All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.”

Response to reports –Education Law § 6444.

1. Every institution shall ensure that reporting individuals are advised of their right to:
 - a. Notify university police or campus security, local law enforcement, and/or state police;
 - b. Have emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a reporting individual to provide information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney. Such official shall also explain whether he or she is authorized to offer the reporting individual confidentiality or privacy, and shall inform the reporting individual of other reporting options;
 - c. Disclose confidentially the incident to institution representatives, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for reporting individuals;
 - d. Disclose confidentially the incident and obtain services from the state or local government;
 - e. Disclose the incident to institution representatives who can offer privacy or confidentiality, as appropriate, and can assist in obtaining resources for reporting individuals;
 - f. File a report of sexual assault, domestic violence, dating violence, and/or stalking and the right to consult the Title IX Coordinator and other appropriate institution representatives for information and assistance. Reports shall be investigated in accordance with institution policy and a reporting individual's identity shall remain private at all times if said reporting individual wishes to maintain privacy;
 - g. Disclose, if the accused is an employee of the institution, the incident to the institution's human resources authority or the right to request that a confidential or private employee assist in reporting to the appropriate human resources authority;
 - h. Receive assistance from appropriate institution representatives in initiating legal proceedings in family court or civil court; and
 - i. Withdraw a complaint or involvement from the institution process at any time.
2. Every institution shall ensure that, at a minimum, at the first instance of disclosure by a reporting individual to an institution representative, the following information shall be presented to the reporting individual: **“You have the right to make a report to university police or**

campus security, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution.”

3. Every institution shall ensure that reporting individuals have information about resources, including intervention, mental health counseling, and medical services, which **shall** include information on whether such resources are available at no cost or for a fee. Every institution shall also provide information on sexually transmitted infections, sexual assault forensic examinations, and resources available through the New York state office of victim services, established pursuant to section six hundred twenty-two of the executive law.

4. Every institution shall ensure that individuals are provided the following protections and accommodations:

a. When the accused or respondent is a student, to have the institution issue a **“no contact order”** consistent with institution policies and procedures, whereby continued intentional contact with the reporting individual would be a violation of institution policy subject to additional conduct charges; if the accused or respondent and a reporting individual observe each other in a public place, it shall be the responsibility of the accused or respondent to leave the area immediately and without directly contacting the reporting individual. Both the accused or respondent and the reporting individual shall, upon request and consistent with institution policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a no contact order, including potential modification, and shall be allowed to submit evidence in support of his or her request. Institutions may establish an appropriate schedule for the accused and respondents to access applicable institution buildings and property at a time when such buildings and property are not being accessed by the reporting individual;

b. To be assisted by the institution's police or security forces, if applicable, or other officials in obtaining an order of protection or, if outside of New York state, an equivalent protective or restraining order;

c. To receive a copy of the order of protection or equivalent when received by an institution and have an opportunity to meet or speak with an institution representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the order about the accused's responsibility to stay away from the protected person or persons;

d. To an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension;

e. To receive assistance from university police or campus security in effecting an arrest when an individual violates an order of protection or, if university police or campus security does not possess arresting powers, then to call on and assist local law enforcement in effecting an arrest for violating such an order, provided that nothing in this article shall limit current law enforcement jurisdiction and procedures;

f. When the accused or respondent is a student determined to present a continuing threat to the health and safety of the community, to subject the accused or respondent to interim suspension pending the outcome of a judicial or conduct process consistent with this article and the institution's policies and procedures. Both the accused or respondent and the reporting individual shall, upon request and consistent with the institution's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, and shall be allowed to submit evidence in support of his or her request;

g. When the accused is not a student but is a member of the institution's community and presents a continuing threat to the health and safety of the community, to subject the accused to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and rules and policies of the institution;

h. To obtain reasonable and available interim measures and accommodations that effect a change in academic, housing, employment, transportation or other applicable arrangements in order to help ensure safety, prevent retaliation and avoid an ongoing hostile environment, consistent with the institution's policies and procedures. Both the accused or respondent and the reporting individual shall, upon request and consistent with the institution's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure and accommodation that directly affects him or her, and shall be allowed to submit evidence in support of his or her request.

5. Every institution shall ensure that every student be afforded the following rights:

a. The right to request that student conduct charges be filed against the accused in proceedings governed by this article and the procedures established by the institution's rules.

b. The right to a process in all student judicial or conduct cases, where a student is accused of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate the institution's code of conduct, that includes, at a minimum: (i) notice to a respondent describing the date, time, location and factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions; (ii) an opportunity to offer evidence during an investigation, and to present evidence and testimony at a hearing, where appropriate, and have access to a full and fair record of any such hearing, which shall be preserved and maintained for at least five years from such a hearing and may include a transcript, recording or other appropriate record; and (iii) access to at least one level of appeal of a determination before a panel, which may include one or more students, that is fair and impartial and does not include individuals with a conflict of interest. In order to effectuate an appeal, a respondent and reporting individual in such cases shall receive written notice of the findings of fact, the decision and the sanction, if any, as well as the rationale for the decision and sanction. In such cases, any rights provided to a reporting individual must be similarly provided to a respondent and any rights provided to a respondent must be similarly provided to a reporting individual.

c. Throughout proceedings involving such an accusation of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate the institution's code of conduct, the right:

- i. For the respondent, accused, and reporting individual to be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process. Rules for participation of such advisor shall be established in the code of conduct.
- ii. To a prompt response to any complaint and to have the complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is “not responsible” until a finding of responsibility is made pursuant to the provisions of this article and the institution's policies and procedures, and other issues including, but not limited to domestic violence, dating violence, stalking or sexual assault.
- iii. To an investigation and process that is fair, impartial and provides a meaningful opportunity to be heard, and that is not conducted by individuals with a conflict of interest.
- iv. To have the institution's judicial or conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay.
- v. To review and present available evidence in the case file, or otherwise in the possession or control of the institution, and relevant to the conduct case, consistent with institution policies and procedures.
- vi. To exclude their own prior sexual history with persons other than the other party in the judicial or conduct process or their own mental health diagnosis and/or treatment from admittance in the institution disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.
- vii. To receive written or electronic notice, provided in advance pursuant to the college or university policy and reasonable under the circumstances, of any meeting they are required to or are eligible to attend, of the specific rule, rules or laws alleged to have been violated and in what manner, and the sanction or sanctions that may be imposed on the respondent based upon the outcome of the judicial or conduct process, at which time the designated hearing or investigatory officer or panel shall provide a written statement detailing the factual findings supporting the determination and the rationale for the sanction imposed.
- viii. To make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.

- ix. To simultaneous (among the parties) written or electronic notification of the outcome of a judicial or conduct process, including the sanction or sanctions.
- x. To be informed of the sanction or sanctions that may be imposed on the respondent based upon the outcome of the judicial or conduct process and the rationale for the actual sanction imposed.
- xi. To choose whether to disclose or discuss the outcome of a conduct or judicial process.
- xii. To have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

6. For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Cleary Act established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), institutions shall make a notation on the transcript of students found responsible after a conduct process that they were “suspended after a finding of responsibility for a code of conduct violation” or “expelled after a finding of responsibility for a code of conduct violation.” For the respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, institutions shall make a notation on the transcript of such students that they “withdrew with conduct charges pending.” Each institution shall publish a policy on transcript notations and appeals seeking removal of a transcript notation for a suspension, provided that such notation shall not be removed prior to one year after conclusion of the suspension, while notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

7. Institutions that lack appropriate on-campus resources or services shall, to the extent practicable, enter into memoranda of understanding, agreements or collaborative partnerships with existing community-based organizations, including rape-crisis centers and domestic violence shelters and assistance organizations, to refer students for assistance or make services available to students, including counseling, health, mental health, victim advocacy, and legal assistance, which may also include resources and services for the respondent.

8. Institutions shall, to the extent practicable, ensure that students have access to a sexual assault forensic examination by employing the use of a sexual assault nurse examiner in their campus health center or entering into memoranda of understanding or agreements with at least one local health care facility to provide such a service.

Options for Confidential Disclosure –Education Law § 6446

1. Every institution shall ensure that reporting individuals have the following:
 - a. Information regarding privileged and confidential resources they may contact regarding domestic violence, dating violence, stalking or sexual assault;
 - b. Information about counselors and advocates they may contact regarding domestic violence, dating violence, stalking, or sexual assault;
 - c. A plain language explanation of confidentiality which shall, at a minimum, include the following provision: **“Even [Institution] offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.”**;
 - d. Information about how the institution shall weigh a request for confidentiality and respond to such a request. Such information shall, at a minimum, include that if a reporting individual discloses an incident to an institution employee who is responsible for responding to or reporting domestic violence, dating violence, stalking, or sexual assault but wishes to maintain confidentiality or does not consent to the institution's request to initiate an investigation, the Title IX Coordinator must weigh the request against the institution's obligation to provide a safe, non-discriminatory environment for all members of its community. The institution shall assist with academic, housing, transportation, employment, and other reasonable and available accommodations regardless of reporting choices;
 - e. Information about public awareness and advocacy events, including guarantees that if an individual discloses information through a public awareness event such as candlelight vigils, protests, or other public event, the institution is not obligated to begin an investigation based on such information. The institution may use the information provided at such an event to inform its efforts for additional education and prevention efforts;
 - f. Information about existing and available methods to anonymously disclose including, but not limited to information on relevant confidential hotlines provided by New York state agencies and not-for-profit entities;
 - g. Information regarding institutional crime reporting including, but not limited to: reports of certain crimes occurring in specific geographic locations that shall be included in the institution's annual security report pursuant to the Clery Act, 20 U.S.C. 1092(f), in an anonymized manner that identifies neither the specifics of the crime nor the identity of the reporting individual; that the institution is obligated to issue timely warnings of crimes enumerated in the Clery Act occurring within relevant geography that represent a serious or continuing threat to students and employees, except in those circumstances where issuing such a warning may compromise current law enforcement efforts or when the warning itself could potentially identify the reporting individual; that a reporting individual shall not be identified in a timely warning; that the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, allows institutions to share information with parents when i. there is a health or safety emergency, or ii. when the student is a dependent on either parent's prior year federal income tax return; and that generally, the institution shall not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting individual.

2. The institution may take proactive steps, such as training or awareness efforts, to combat domestic violence, dating violence, stalking or sexual assault in a general way that does not identify those who disclose or the information disclosed.
3. If the institution determines that an investigation is required, it shall notify the reporting individuals and take immediate action as necessary to protect and assist them.
4. The institution should seek consent from reporting individuals prior to conducting an investigation. Declining to consent to an investigation shall be honored unless the institution determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the reporting individual or other members of the community. Honoring such a request may limit the institution's ability to meaningfully investigate and pursue conduct action against an accused individual. Factors used to determine whether to honor such a request include, but are not limited to:
 - a. Whether the accused has a history of violent behavior or is a repeat offender;
 - b. Whether the incident represents escalation in unlawful conduct on behalf of the accused from previously noted behavior;
 - c. The increased risk that the accused will commit additional acts of violence;
 - d. Whether the accused used a weapon or force;
 - e. Whether the reporting individual is a minor; and
 - f. Whether the institution possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

Mandatory Education For Students –Education Law § 6447

1. Every institution shall adopt a comprehensive student onboarding (Organizational socialization) and ongoing education campaign to educate members of the institution's community about domestic violence, dating violence, stalking, and sexual assault, in compliance with applicable federal laws, including the Clery Act as amended by the VAWA reauthorization of 2013, 20 U.S.C. 1092(f).
2. Included in this campaign shall be a requirement that all new first-year and transfer students shall, during the course of their onboarding to their respective institution, receive training on the following topics, using a method and manner appropriate to the institutional culture of each institution:
 - a. The institution prohibits sexual and interpersonal violence and will offer resources to any victims and survivors of such violence while taking administrative and conduct action regarding any accused individual within the jurisdiction of the institution;
 - b. Relevant definitions including, but not limited to, the definitions of sexual assault, domestic violence, dating violence, stalking, confidentiality, privacy, and consent;
 - c. Policies apply equally to all students regardless of sexual orientation, gender identity, or gender expression;
 - d. The role of the Title IX Coordinator, university police or campus security, and other relevant offices that address domestic violence, dating violence, stalking, and sexual assault prevention and response;

- e. Awareness of violence, its impact on victims and survivors and their friends and family, and its long-term impact;
 - f. Bystander intervention and the importance of taking action to prevent violence when one can safely do so;
 - g. Risk assessment and reduction including, but not limited to, steps that potential victims, perpetrators, and bystanders can take to lower the incidence of violations, which may contain information about the dangers of drug and alcohol use, including underage drinking and binge drinking, involuntary consumption of incapacitating drugs and the danger of mislabeled drugs and alcohol, the importance of communication with trusted friends and family whether on campus or off campus, and the availability of institution officials who can answer general or specific questions about risk reduction; and
 - h. Consequences and sanctions for individuals who commit these crimes and code of conduct violations.
3. Every institution shall train all new students, whether first-year or transfer, undergraduate, graduate, or professional.
4. Every institution shall use multiple methods to educate students about violence prevention and shall share information on domestic violence, dating violence, stalking and sexual assault prevention with parents of enrolling students.
5. Every institution shall offer to all students general and specific training in domestic violence, dating violence, stalking and sexual assault prevention and shall conduct a campaign that complies with the VAWA 20 U.S.C. 1092(f), to educate the student population. They shall, as appropriate, provide or expand specific training to include groups such as international students, students that are also employees, leaders and officers of registered or recognized student organizations, and online and distance education students. They shall also provide specific training to members of groups that the institution identifies as high-risk populations.
6. Every institution shall require that each student leader and officer of student organizations recognized by or registered with the institution, as well as those seeking recognition by the institution, complete training on domestic violence, dating violence, stalking, or sexual assault prevention prior to receiving recognition or registration, and each institution shall require that each student-athlete complete training on domestic violence, dating violence, stalking, or sexual assault prevention prior to participating in intercollegiate athletic competition.
7. Every institution must regularly assess programs and policies established pursuant to this article to determine effectiveness and relevance for students.

Privacy in legal challenges –Education Law § 6448

Any proceeding brought against an institution which seeks to vacate or modify a finding that a student was responsible for violating an institution's rules regarding a violation covered by this article, the name and identifying biographical information of any student shall be presumptively confidential and shall not be included in the pleadings and other papers from such proceeding absent a waiver or cause shown as determined by the court. Such witnesses shall be identified only as numbered witnesses. If such a name or identifying biographical information appears in a pleading or paper filed in such a proceeding, the court, absent such a waiver or cause shown,

shall direct the clerk of the court to redact such name and identifying biographical information and so advise the parties.

Safe Schools Against Violence in Education Act (SAVE) - Education Law §§ 2801, 2801-a, 2802

Requires the State Department of Education in conjunction with Division of Criminal Justice Services to develop a violent incident reporting system to receive annual reports on violent and disruptive incidents at schools and in school districts. In addition, every school in the State must develop student codes of conduct on school property, school safety and emergency response plans, standards and procedures to assure the protection of school employees and comply with the statewide uniform violent incident reporting procedure. Each local education agency must establish procedures for notifying parents of students attending dangerous schools and parents of students who were victims of violent criminal offenses on school grounds of their right to transfer to a safer public school within the district.

Sexual Assault Prevention Information – Education Law §§ 6432, 6434

Each college shall inform incoming students about sexual assault, domestic violence and stalking prevention measures through programs which may include workshops, seminars, discussion groups, and film presentations, in order to disseminate information, promote discussion, encourage reporting, and facilitate prevention of sexual assault, domestic violence and stalking. Such information shall include, but not be limited to: 1. the applicable laws, ordinances, and regulations relating to such offenses; 2. the penalties for the commission of a sex offense, a domestic violence incident and a stalking offense; 3. the procedures in effect at the college for dealing with such offenses; 4. the availability of counseling and other support services for the victims of such offenses; 5. the nature of and common circumstances relating to sex offenses, incidents of domestic violence and stalking offenses on college campuses; and 6. the methods the college employs to advise and to update students about security procedures.

Student Access to Campus Crime Statistics – Education Law §§ 6433 (20 USC 1092(f))

Requires NYS colleges and universities receiving State funds to indicate in their campus catalog, student handbook and viewbook how to access the campus crime statistics that are filed annually with the United States Department of Education as required under Title 20 of the U.S. Code Section 1092(f). Every campus catalog, student handbook and viewbook shall state that “The Advisory Committee on Campus Safety will provide upon request all campus crime statistics as reported to the United States Department of Education.” The information in the campus catalog, student handbook and viewbook shall include the United States Department of Education's web site address for campus crime statistics and a campus phone number for a designated college campus contact who is authorized to provide such statistics for that college. Whenever an individual requests such campus crime statistics, the college shall provide a hard

copy mailed to the individual within ten days of the request and that information will include all of the statistics that the campus is required to ascertain under Title 20 of the U.S. Code Section 1092(f).

Sex Offender Registration Act (SORA) – Megan's Law – Correction Law Article 6-C (§168 et seq.)

SORA requires the registration of individuals convicted in New York State of certain sex offenses as well as the registration of those individuals convicted in another jurisdiction if the offense is equivalent to a New York State registerable sex offense. In addition, if the individual is convicted of a felony requiring registration in the conviction jurisdiction, or the individual is convicted of one or more specific federal or military offenses, the individual will be required to register in New York State. Individuals convicted of one or more registerable offenses on or after the effective date of SORA must register with the Division. Additionally, any person convicted of a registerable offense who was incarcerated or under parole or probation supervision on January 21, 1996 is required to be registered.

SORA established a Sex Offender Registry within the New York State Division of Criminal Justice Services. SORA was enacted to assist local law enforcement agencies and to protect communities by: 1) requiring sex offenders to register with the State; and, 2) providing information to the public about certain sex offenders living in their communities. SORA took effect on January 21, 1996.

Information about Level 2 and Level 3 offenders can be obtained by checking the DCJS website, which includes a search for Level 2 and Level 3 sex offenders (http://www.criminaljustice.ny.gov/SomsSUBDirectory/search_index.jsp). By law, DCJS cannot list Level 1 offenders on its website. You can now register to receive alerts – via e-mail, text message, fax or telephone – whenever a Level 2 or Level 3 sex offender listed on the public subdirectory moves to, or from, a community of interest to you or your family. You may also call the Sex Offender Registry at 518-457-5837 or 1-800-262-3257 to get information about all levels of sex offenders. When calling the toll-free number, you will have to provide the offender's name, and one of four identifiers (either an exact address, date of birth, social security number or driver's license number). Additionally, law enforcement may tell the community about sex offenders living in the area. If you learn information about an offender, you may tell others. However, the information may not be used to harass or commit a crime against any person. You can also contact Parents for Megan's Law (PFML) at 631 689-2672 to assist you in obtaining information about registered sex offenders and about prevention education. PFML also provides a public registry of Level 1 sex offenders that law enforcement has notified the community about in Suffolk and Nassau County on its website located at www.parentsformeganslaw.org. Email alerts are also available.

