



**CONTACT**

POLICY DEPARTMENT

ELIZABETH KOCIENDA

212.382.4788 | ekocienda@nycbar.org

MARY MARGULIS-OHNUMA

212.382.6767 | mmargulis-ohnuma@nycbar.org

**REPORT ON LEGISLATION BY THE  
MATRIMONIAL LAW COMMITTEE  
AND THE DOMESTIC VIOLENCE COMMITTEE**

**A.9505-A / S.7505-A (Budget Article VII) – Part RR**

AN ACT amending various laws to implement the state public protection and general government budget for the 2020-2021 state fiscal year, including the Family Court Act relating to orders of protection (Part RR)

**THIS PROVISION IS OPPOSED**

The Matrimonial Law and Domestic Violence Committees of the New York City Bar Association oppose Part RR of the 2020-2021 New York State Executive Budget for Public Protection and General Government. While the proposal is well-intentioned, it would do little to prevent domestic violence or to help its survivors, and would create serious problems for the state courts and other litigants.

Part RR would amend Article 8 of the Family Court Act (the “FCA”) so that family courts could issue temporary and final orders of protection – including ordering one spouse out of the marital home – without finding that a family offense has been committed.

Currently, a party seeking an order of protection must allege that the respondent has committed a “family offense.” Family offenses range from assaulting a member of one’s family or household, to stalking or menacing them, to committing disorderly conduct against them (whether in a public or private place). FCA § 812(1). Once the petitioner makes such allegations, the Family Court<sup>1</sup> can issue a temporary order of protection, which can require the respondent to leave his or her home or to avoid contact with his or her children. To issue a temporary order of protection, the judge need only find “good cause,” and the judge need not hear from the respondent. §§ 821-a(2)(b), 828(1)(a), 842. In our experience, a temporary order to “stay away” from the marital home will exclude a respondent from his or her home for about 30 days until the case can be heard.<sup>2</sup>

Once a hearing is held, if the judge finds that the allegations – including the allegation of a family offense -- are supported by “a fair preponderance of the evidence,” then he or she can issue a final order of protection. A final order can keep a respondent away from his or her home or children for up to two years, or longer in some cases. FCA §§ 832, 842.

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<sup>1</sup> These powers are shared with the Criminal Court, especially when Family Court is not in session.

<sup>2</sup> This average reflects our experience before the coronavirus crisis. On March 19, 2020, the Chief Administrative Judge issued an order that extends the duration of all temporary orders of protection until the cases can be re-calendared.

Part RR would remove the “family offense” requirement. It would allow a petitioner to secure a temporary order of protection merely by alleging that circumstances exist that require an order of protection for the purposes of “attempting to stop the violence, end the family disruption and obtain protection.”<sup>3</sup> And it would empower the family court to issue final orders “based on any circumstances that the court determines require an order” for those same vague purposes without a hearing or determination that the respondent had done anything wrong.

The proposal equates relatively minor infractions with real cases of domestic violence which, in turn, raises the risk that law enforcement will fail to take such orders of protection seriously, increases the number of cross orders of protection, and creates a situation where erroneous grants will be unappealable. While we applaud the intent to recognize that domestic violence issues cannot be fully addressed by the penal code, the proposal in its current form is likely to cause more harm than good.

For these reasons, the Committees oppose Part RR of the bill.

Matrimonial Law Committee  
Dylan S. Mitchell, Chair  
Matthew A. Feigin, Legislation Subcommittee Chair

Domestic Violence Committee  
Amanda Beltz, Chair

March 2020

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<sup>3</sup> FCA § 812(2)(b) lists these among the purposes of the family court system. Sections 1 and 2 of Part RR of A.9505-A/S.75-5-A reference that list of purposes to define when temporary and final orders can be issued.