



# 2023 Annual Conference

*Syracuse, New York*

## **After-Hours Emergency Family Court Powers in Justice Court With a Family Court Perspective**

Date: Tuesday, October 3, 2023

Instructors:

Arielle Bryant, Esq.

Hon. Kathie E. Davidson

MCLE: 1.0 Skills

This program has been approved for credit in  
New York State for all attorneys  
including those who are Newly Admitted  
(less than 24 months) and administered by  
the Onondaga County Bar Association



## PRESENTERS

**Hon. Kathie E. Davidson**  
**Dean of the New York State Judicial Institute**

Hon. Kathie E. Davidson as Dean of the New York State Judicial Institute, a statewide judicial education and research center focused on the latest developments in the law and other disciplines that influence the law. As Dean, Judge Davidson oversees the creation and delivery of training seminars for newly elected and appointed Unified Court System (UCS) judges, continuing education programs for UCS judges and lawyers, and cooperative education programs with state and federal judicial systems, legal academics, and other interested stakeholders. In March 2023, Dean Davidson was recognized in City & State's Law Power 100 List as one of the top 100 most influential legal professionals in the world of New York politics and government.



**ARIELLE BRYANT, ESQ.** has worked for the Unified Court System since 2007 as Special Counsel for the Town and Village Courts, 9<sup>th</sup> Judicial District. Ms. Bryant received her B.A. in Sociology from SUNY Albany, and her J.D. from Pace University School of Law and is admitted to practice law in New York.



**AFTER-HOURS EMERGENCY FAMILY COURT POWERS WITH A  
FAMILY COURT PERSPECTIVE.**

Hon. Kathie E. Davidson, J.S.C, Dean, Judicial Institute.  
Arielle Bryant, Esq., Special Counsel, 9<sup>th</sup> Judicial District.



**EMERGENCY POWERS WHEN FAMILY  
COURT IS NOT IN SESSION INCLUDES:**

**ISSUING TEMPORARY ORDERS OF  
PROTECTION FOR A FAMILY  
COURT MATTER**



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EMERGENCY POWERS WHEN FAMILY COURT IS NOT IN SESSION INCLUDES:

**ADDRESSING EMERGENCY CUSTODY AND VISITATION ISSUES**



3

EMERGENCY POWERS WHEN  
FAMILY COURT IS NOT IN SESSION  
INCLUDES:

**ARRAIGNMENT OF FAMILY COURT WARRANTS.**

**4**

**EMERGENCY POWERS WHEN  
FAMILY COURT IS NOT IN SESSION  
INCLUDES:**

**RAISE THE AGE**

**5**

**EMERGENCY POWERS WHEN  
FAMILY COURT IS NOT IN SESSION  
INCLUDES:**

**JUVENILE DELINQUENCY ARRAIGNMENTS**

## TEMPORARY ORDERS OF PROTECTION

Criminal Procedure Law Section 530.12(3-a) and Family Court Act Section 154-d(1), gives the authority to a local court when a family court is not in session for a local court **to issue a temporary Family Court order of Protection.**

**TOP's issued when Family Court is NOT in session ARE Family Court Orders.**

## FAMILY COURT TEMPORARY ORDERS OF PROTECTION

Contains all the provisions of a Criminal TOP *and* can include custody or visitation provisions changing an already existing custody and visitation Order or can establish something not yet addressed by Family Court.



## TEMPORARY ORDERS OF PROTECTION

### Paperwork Required:

Petitioner **MUST** submit a sworn affidavit alleging the following:

1. Family court is not in session
2. A Family Offense has been committed (defined in the Family Court Act Section 812 or CPL 530.11).
3. The family offense has been committed by a member of the same family or household.
  - a. Related by blood or marriage
  - b. Legally married or formerly married
  - c. Child in common (no marriage required) or currently or formerly lived together

## TEMPORARY ORDERS OF PROTECTION

### Paperwork Required:

- Petitioner **MUST** submit a sworn affidavit alleging the following:
3. The family offense has been committed by a member of the same family or household.
    - d. Intimate relationship- determined by
      - i. Nature and type of relationship (not limited to sexual relationship)
      - ii. Frequency of interaction
      - iii. Duration
      - iv. It is **NOT** a business or social relationship
  4. A family offense petition has been filed **OR** will be filed in family court on the next day the court is in session.

## FAMILY COURT ACT- ARTICLE 8

**The Court shall not deny an order of protection...solely on the basis that the acts or events are not relatively contemporaneous with the date of the petition.**

### WHAT DO YOU NEED TO ISSUE THE TOP?

- Petitioner's papers, "good cause", and determination of what provisions need to be in the TOP.
- What does "good cause" mean?
  - Previous orders, whether they were obeyed?
  - Prior incidents of abuse
  - Extent of past or present injury
  - Threats
  - Drug or Alcohol abuse
  - Access to weapons

## HOW LONG SHOULD THE TOP BE IN EFFECT?

TOPs should be in effect for a maximum of four days, they are an Ex Parte action, no finding of guilt needed or whether a family offense has been committed. Expiration date must be on the TOP, maximum of **4 days** from the issuance.

## **Petitioner should be advised:**

- 1. May continue the proceeding in family court**
- 2. If a local criminal court accusatory instrument is filed, the proceeding in criminal court and family court can both continue**

## TOP ISSUED: CPL 530.12(6),(8)

1. Provide a copy of the TOP to the petitioner
2. Email or fax a copy of the TOP to the Family Court with the sworn affidavit the next day the court is in session OR as soon as practicable BUT no more than four calendar days after the issuance of the order.
3. TOP served on the respondent (by police department), copy to defense counsel if any.

## TOP ISSUED: CPL 530.12(6),(8)

1. Copy filed by the clerk with the Sheriff in the county in which the complainant resides or if the complainant resides in the city with the police department of that city. Can also filed with any other police agency that has jurisdiction over the complainant's home or work or school.
2. Probation, Parole, Corrections, if applicable.
3. Enter it into WEB DVS.

## TOP ISSUED: CPL 530.12(6),(8)

The order of protection or temporary order of protection shall also contain the following notice: "This order of protection will remain in effect even if the protected party has, or consents to have, contact or communication with the party against whom the order is issued. This order of protection can only be modified or terminated by the court. The protected party cannot be held to violate this order nor be arrested for violating this order."

- a. Note: Any subsequent amendment or revocation of such order shall be filed in the same manner.

## **Criminal Procedure Law Section 530.12(3-b) and Family Court Act Section 154-d(2),**

Gives the authority to a local court when a family court is not in session for a local court **to modify an existing family court order of protection or temporary order of protection.** "Good cause" (see above) needed, and Judge should articulate the findings of good cause. These TOP's are for a short duration and anything that needs to be changed will be done in family court. Follow the same process as listed above for issuing a TOP.

**OTHER TRAINING  
AVAILABLE:**

- Also see, CORE 2023 Domestic Violence Arraignments and Updates.
- Also see, OJCS 2016 CORE Training "Justice Courts' Emergency Powers to Issues Ex Parte Orders of Protection Pursuant to CPL 530.12(3-A).

**ADULT FAMILY COURT WARRANTS**

Family Court Act Section 155 applies and establishes the procedures for processing ADULT respondents arrested pursuant to a Family Court Warrant (FCA Section 153).

## ADULT FAMILY COURT WARRANTS

### Family Court Act Section 155 applies: It says:

1. If an adult respondent is arrested under this act when the family court is not in session, he or she shall be taken to the most accessible magistrate and arraigned. The production of a warrant issued by the family court, a certificate of warrant, a copy or a certificate of the order of protection or temporary order of protection, an order of protection or temporary order of protection, or a record of such warrant or order from the statewide computer registry established pursuant to section two hundred twenty-one-a of the executive law shall be evidence of the filing of an information, petition or sworn affidavit, as provided in section one hundred fifty-four-d of this article. Upon consideration of the bail recommendation, if any, made by the family court and indicated on the warrant or certificate of warrant, the magistrate shall thereupon commit such respondent to the custody of the sheriff, as defined in subdivision thirty-five of section 1.20 of the criminal procedure law, admit to, fix or accept bail, or parole him or her for hearing before the family court, subject to the provisions of subdivision four of section 530.11 of the criminal procedure law concerning arrests upon a violation of an order of protection.

## ADULT FAMILY COURT WARRANTS

### Family Court Act Section 155 Section 2:

Covers the situations in which the respondent has been arrested for allegedly committing a family offense and there exists no prior warrant or order of protection. In that situation, this subdivision permits the complainant to elect to pursue a criminal case OR a family court article 8 family offense proceeding.

## ADULT FAMILY COURT WARRANTS

**Family Court Act Section 155 applies: It says:**

2. If no warrant, order of protection or temporary order of protection has been issued by the **family court**, whether or not an information or petition has been filed, and an **act** alleged to be a family offense as defined in section eight hundred twelve of this **act** is the basis of an arrest, the magistrate shall permit the filing of an information, accusatory instrument or sworn affidavit as provided for in section one hundred fifty-four-d of this article, verified in accordance with subdivision one of section 100.30 of the criminal procedure law, alleging facts in support of a petition pursuant to article eight of this **act**. The magistrate shall thereupon commit such respondent to the custody of the sheriff, as defined in subdivision thirty-five of section 1.20 of the criminal procedure law, admit to, fix or accept bail, or parole such respondent for hearing before the **family court** and/or appropriate criminal court.

## ADULT FAMILY COURT WARRANTS

**Family Court Act Section 155 applies: It says:**

3. The protected party in whose favor the order of protection or temporary order of protection is issued may not be held to violate an order issued in his or her favor nor may such protected party be arrested for violating such order.



## WARRANT ISSUED FOR FAILURE TO PAY CHILD SUPPORT

PENAL LAW AND CRIMINAL PROCEDURE LAW DO NOT APPLY!  
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## OFF-HOUR PROCEDURES

**See, email from Office of Justice Court  
Support, dated 5/11/2023- INTERNAL  
memos and forms.**

### **OFFICE OF JUSTICE COURT SUPPORT WEBSITE**

**Acting as Family Court Judge - Town & Village Courts  
([nycourts.gov](http://nycourts.gov))**

## OFF-HOUR PROCEDURES

1. Review Warrant of Arrest
2. Check if issuing Family Court Judge included a bail recommendation and/or Order of Commitment.
3. Determine if the person will be detained or released.

## OFF-HOUR PROCEDURES

### Detained:

1. Complete Commitment Order
2. Provide copy to law enforcement/corrections
3. Direct corrections to produce the person in Family Court 9:00 a.m. next business day.

## OFF-HOUR PROCEDURES

### Released:

1. Complete a Notice to Appear
2. Provide copy to the person
3. Direct person to appear in Family Court 9:00 a.m. next business day.

## OFF-HOUR PROCEDURES

### Next Steps:

1. Complete Warrant Status Update to Law Enforcement Agency
2. Send completed Warrant Status Update to Law Enforcement Agency to the Agency listed in Warrant of Arrest
3. Send ALL forms to the issuing Family Court immediately after return on warrant proceeding has concluded.

## INTERPRETING THE WARRANT

- If the Warrant directs the respondent to appear in Family Court:
  - ROR can be issued
  - Direct Respondent to appear in Family Court 9:00 a.m. the next business day
  - Issue an appearance notice accordingly

## INTERPRETING THE WARRANT

- If the Warrant includes a bail recommendation:
  - Consider setting bail as recommended (REMEMBER CPL and PL DO NOT APPLY)- Court has the right to exercise discretion, set different bail than recommended or ROR.
  - If bail is set, commit the respondent to custody
  - Adjourn the matter to Family Court, next business day 9:00 a.m.

## INTERPRETING THE WARRANT

- If the Warrant direct the responded to produce the subject child:
  - Direct the respondent to produce the child
  - ROR the respondent
  - Direct respondent to appear in Family Court 9:00 a.m. next business day
  - Issue an appearance notice

## INTERPRETING THE WARRANT

- Support or Paternity Cases: (F, P, U dockets)
  - Warrant indicates respondent was found in willful violation and a commitment order was issued (with or without a purge/undertaking amount):
    - Remand respondent
    - Commit respondent to custody of the correctional facility
    - Adjourn matter to Family Court 9:00 a.m. next business day
    - Issue a commitment order directing respondent to be produced.

## WHAT IS RAISE THE AGE?

Since October 2019, New York no longer automatically prosecutes defendants who are 16 and 17 years old, who are arrested for misdemeanors and felonies as adults.

Matters are heard in the Youth Part. CPL Section 722.10 established the Youth Part.

- 1. The chief administrator of the courts is hereby directed to establish, in a superior court in each county of the state, a part of the court to be known as the youth part of the superior court for the county in which such court presides. Judges presiding in the youth part shall be family court judges, as described in article six, section one of the constitution. To aid in their work, such judges shall receive training in specialized areas, including, but not limited to, juvenile justice, adolescent development, custody and care of youths and effective treatment methods for reducing unlawful conduct by youths, and shall be authorized to make appropriate determinations within the power of such superior court with respect to the cases of youths assigned to such part. The youth part shall have exclusive jurisdiction in all proceedings in relation to juvenile offenders and adolescent offenders, except as provided in this article or article seven hundred twenty-five of this chapter.
- 2. The chief administrator of the courts shall also direct the presiding justice of the appellate division, in each judicial department of the state, to designate judges authorized by law to exercise criminal jurisdiction to serve as accessible magistrates, for the purpose of acting in place of the youth part for certain first appearance proceedings involving youths, as provided by law. When designating such magistrates, the presiding justice shall ensure that all areas of a county are within a reasonable distance of a designated magistrate. A judge authorized to preside as such a magistrate shall have received training in specialized areas, including, but not limited to, juvenile justice, adolescent development, custody and care of youths and effective treatment methods for reducing unlawful conduct by youths.

## ABBREVIATIONS EXPLAINED

- **AM- Accessible Magistrate-** Judge designated to perform off-hour arraignments of adolescents and juveniles and warrant returns (Youth Part AND JD warrants) in accordance with the Raise the Age Statutes. Accessible Magistrates take additional specific Raise the Age Training and are approved to preside by Administrative Order.
- **AO- Adolescent Offender-** 16- or 17-year-old charges with a Felony after October 1, 2018, if they were 16 or October 1, 2019, if they were 17. Prosecuted by the District Attorney's Office. Cases are heard in the Youth Part.

## ABBREVIATIONS EXPLAINED

**JO- Juvenile Offender- 13-14-15-year-old charged with a designated felony. See, CPL Sec 1.20(42). Prosecuted by the District Attorney's Office and cases are heard in the Youth Part.**

"Juvenile offender" means (1) a person, thirteen years old who is criminally responsible for acts constituting murder in the second degree as defined in subdivisions one and two of section 125.25 of the penal law, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; and (2) a person fourteen or fifteen years old who is criminally responsible for acts constituting the crimes defined in subdivisions one and two of section 125.25 (murder in the second degree) and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible; section 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); subdivisions one and two of section 130.35 (rape in the first degree); subdivisions one and two of section 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law; or defined in the penal law as an attempt to commit murder in the second degree or kidnapping in the first degree, or such conduct as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law.

## ABBREVIATIONS EXPLAINED

- **JD- Juvenile Delinquent-** 16- or 17-year-old charged with a misdemeanor including violations that are part of the same criminal transaction. Excludes vehicle and traffic law infractions. What stays in local criminal court? Vehicle and traffic law misdemeanors, Traffic Infractions and Violations. See, NY Family Court Act Sec. 311.1
  - Non- J.O Felony, misdemeanors including VTL, violations ages 7-15 are heard in Family Court.
- **PPD- Pre-Petition Detention Application for JDs.** Refers to the detainment of Juvenile Delinquents when the family court is NOT in session. Prosecutor is the County Attorney, and an Attorney for the Child (AFC) is counsel for the JD. Accessible Magistrates must preside over JD warrants after-hours. Cases are heard in Family Court. See, Family Court Act Article 3 and Family Court Act Section 312.2(3) directing JD warrants to be heard before an Accessible Magistrate

