
Index of Key Victim-Oriented State Statutes 2006

Introduction

Over several decades, New York State has enacted significant victim-oriented statutes. From the right to file victim impact statements and speak at sentencing, to the right to obtain compensation and seek restitution for any actual or consequential financial losses as a result of identity theft, these key statutes and other protections are testaments to the efforts and leadership of activists and survivors.

The purpose of this summary is to provide survivors of crime and others with a basic understanding or foundation of the law. Since this is not an exhaustive listing, you should consult the statutory text and counsel for additional information and references.

The following statutory guide, reflecting enactments through September 2006, outlines key laws that provide rights and remedies for victims of crime including domestic violence, sexual assault, stalking, child abuse and exploitation, DWI and identity theft/fraud. The relevant citations are included for reference.

Special State Statutory Provisions for Victims of Crime

Information and Notification

Information on Protections for Crime Victims – Executive Law §§625-a, 625-b, 641, 642

Requires informational pamphlets, booklets and necessary claim forms for crime victim compensation to be available at every police precinct and location where a crime may be reported. After reporting a crime, a victim must be informed of available assistance. The Division of Criminal Justice Services (DCJS) and the Crime Victims Compensation Board (CVB) must develop and implement a standardized procedure to be used by law enforcement to notify victims about their rights and services. Every police primary investigation report shall indicate whether a victim has been informed of their rights. DCJS and CVB must also devise a standardized form for use by district attorney offices for the purpose of documenting notification compliance. Each district attorney must complete and submit the report to the CVB annually.

* Standardized forms provision, effective January 1, 2007

Notification of Defendant Status – Executive Law §641(3); Criminal Procedure Law §§380.50(4), (5), 440.50

Entitles survivors to be informed of judicial proceedings relating to their case, including the arrest, arraignment, release and trial sentencing of the defendant; case disposition and terms of imprisonment; and the escape, absconding, discharge, parole, conditional release or release of the person imprisoned. If the final disposition of the case results in the commitment of the defendant to the custody of the State Department of Correctional Services (DOCS), the victim shall also receive notice of his or her right to submit a written, audiotaped or videotaped victim impact statement to the Parole Board. The victim must provide current contact information to prosecutor.

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

Requires the mental health facility to notify the victim and any other person the facility staff believes to be in danger of the escape of a defendant in its custody.

Victim Information and Notification Everyday (VINE) – Jenna’s Law – Chapter 1, Laws of 1998 §42; Information Pamphlet from District Attorney – Executive Law §646-a(2)(g)

Creates an automated telephone system providing a victim or any member of the general public with information concerning an inmate’s prison status and release data. (Call the DOCS toll-free number at 1-888-VINE 4NY.) In addition, the pamphlet, which is produced by DCJS with CVB for district attorney offices to advise victims of their rights, must include information on the VINE program and the Division of Paroles’s toll-free telephone number for information on the status of the defendant.

Financial Assistance

Compensation – Executive Law §§621, 626, 631(8)

Establishes that certain victims of crime (e.g., victims who were physically injured as a result of the crime or those under 18, 60 or over or disabled who were not physically injured) may be eligible for compensation from the CVB to reimburse for **out-of-pocket** expenses including medical or other services enumerated in the law:

- Rehabilitative and/or occupational training
- Domestic violence shelter services
- Loss of earnings or support not to exceed \$30,000
- Burial expenses not to exceed \$6,000 of a victim who died directly as a result of a crime
- Costs of crime clean-up and securing a crime scene not to exceed \$2,500
- Transportation costs for visits to the court
- Repair or replacement of essential personal property lost, damaged, or destroyed, not to exceed \$500 (except for victims of crime who acted as good samaritans, who are eligible to receive up to \$5,000 in compensation)
- Reasonable attorney's fees for representation before the Board not to exceed \$1,000
- Replacement of a driver's license, permit, registration and number of plates lost or destroyed as a result of a crime
- Relocation or moving expenses up to \$2,500

The definition of out-of-pocket loss for crime victim compensation from the CVB includes expenses incurred by a victim for medical care or other services as a result of the exacerbation of a pre-existing disability or condition directly resulting from or related to the crime.

Eligibility and Filing of a Claim with CVB – Executive Law §§ 624, 625

A victim of a crime; certain relatives and dependents, including surviving spouse, child, parent, sibling, stepbrother or stepsister, stepparent or person primarily dependent on the victim for support; those who paid for burial costs for an innocent crime victim; child victims, a child who witnesses a crime and the child's parent, guardian, or siblings may be eligible for compensation from the CVB. Victims of terrorist acts outside of the U.S. who are residents of New York State may also apply for compensation. If the victim is under the age of 18, an incompetent, or a conservatee, the claim may be filed by a relative, guardian or attorney. Provision limits the time to file a claim to a year after the incident or discovery of the crime. The CVB may extend the time for filing a claim provided good cause is demonstrated.

Emergency Award – Executive Law §630

Provides that certain crime victims may be eligible to receive an emergency award of up to \$1,500 dollars (\$500 for each award), which is deducted from any final award made to the claimant by CVB.

Expedited Claim Processing for Livery Cab Drivers – Executive Law §§627(6), 631(3), (4)

Requires CVB to review claims filed by livery cab drivers on an expedited basis, within 30 days of receipt. Awards for loss of earnings by a livery operator are for the period of time the Board determines that the driver is unable to work and has lost earnings, in an amount not to exceed \$20,000. Because undue hardship may result, any emergency award will be granted without reduction of workers' compensation benefits.

Confidentiality of CVB Records – Executive Law §633

Requires CVB to keep all claims, records and proceedings confidential with some exceptions such as for criminal justice purposes or judicial subpoenas.

Restitution and Reparation – Penal Law §60.27

Authorizes the court to order a convicted defendant to pay restitution to a victim of crime 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 the time of sentencing, the district attorney must advise the court of the victim’s request and inform the court of the extent of economic loss. A victim must advise the district attorney’s office that she or he seeks restitution or reparation. The district attorney will assist the victim in preparing a victim impact statement as part of the pre-sentence report (*Criminal Procedure Law §390.30(3)(b)*) explaining to the court the reasons and amount requested by the victim. Upon submitting the necessary documents showing the victim’s losses, the district attorney is under an obligation to petition the court to order restitution. Documents submitted to the court concerning defendant’s sentencing including pre-sentencing reports must be kept confidential (*Criminal Procedure Law §390.50*). The amount of restitution or reparation cannot exceed the costs of the crime. Except upon consent of the defendant, or as a condition of probation or conditional discharge, the amount of restitution or reparation will not exceed \$15,000, in the case of a felony, \$10,000 in the case of an offense other than a felony and \$1,000 for a juvenile. In the event restitution or reparation is not ordered, the court must clearly state its reasons on the record.

Civil Action Against Perpetrator – Civil Practice Law and Rules §§213-b, 215(3), (8)

Provides that a victim may bring a civil action against the convicted perpetrator who harmed them within seven years of the commission of the crime. In the case of a defendant convicted of a specified serious crime (e.g., violent felonies), a victim may sue the defendant within 10 years of the date of the perpetrator’s conviction. A victim may also 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.

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

Provides that convicted criminals, during imprisonment and in some cases after release, may be held accountable financially to the victims of their crimes. Allows victims to sue the convicted criminal who harmed them within three years of the discovery of any profits of the crime (e.g., money derived from the crime that injured the victim). In cases of specified crimes (e.g., violent felonies), victims may also seek damages from money or property that the offender has acquired from other sources (e.g., gifts, income). The law requires any person who provides or receives funds on behalf of an inmate or offender to give notice to CVB on behalf of the victim, which is published in a newspaper.

Fee Waiver – Vehicle and Traffic Law §§401(3)(c), 503(3)(ii)

Authorizes the Commissioner of the Department of Motor Vehicles to waive the payment of fees for the replacement of a driver's license, permit, registration and number plates which are lost or destroyed as a result of a crime.

Access to Justice

Fair Treatment Standards – Executive Law Article 23

Sets forth a range of requirements for the treatment of victims in all aspects of the criminal justice system, including notification to the victim of the availability of crime victim compensation and victim assistance programs, of the stages of the judicial proceedings and of the steps that law enforcement can take to protect victims from intimidation.

Free Copy of Police Report – Executive Law §646

Entitles victims of crime to receive a free copy of the police report relating to the crime.

Property Return – Executive Law §642(3)

Requires a victim's property held for evidentiary purposes to be promptly returned, unless there is a compelling reason, relating to trial, for it to be retained.

Victim Impact Statement and Confidentiality – Criminal Procedure Law §§380.50, 390.20, 390.30, 390.50

Victims or their families may address the court on any matter relevant to sentencing, when a defendant has committed a felony so long as they give the court 10 days notice. Generally, a judge cannot sentence a defendant convicted of a felony or a misdemeanor to 90 days or more in jail or

to a sentence of probation without having received a pre-sentence investigation report prepared by the Department of Probation. Unless irrelevant, the report must contain a victim impact statement with information regarding the extent of injury or economic loss, the actual out-of-pocket loss and the views of the victim relating to disposition, including the amount of restitution and reparation sought by the victim. Any documents submitted to the court for the purpose of sentencing must be kept confidential. Prior to sentencing, the victim or victim's family must be given a copy of the victim impact statement from the prosecutor. The prosecutor shall also give at least 21 days notice to the victim of the date of sentencing and inform him or her of the right to speak at sentencing.

Victim Impact Statement to Parole Board – Criminal Procedure Law §440.50(1); Executive Law §259-i (2)(c)

Enables a crime victim to make a statement before the Parole Board, which may include information on threatening or intimidating conduct toward the victim, victim's representative or family member, made by the offender or by a person who is directed by the defendant. The statement may be audiotaped or videotaped, and the victim's or victim's representative's identity, including name and address, must be kept confidential.

Protection from Intimidation – Penal Law §§ 215.15, 215.16, 215.17

Protects survivors and witnesses from being intimidated, threatened or harassed or having his or her property damaged by a defendant or anyone associated to the defendant. A defendant will face additional criminal charges to the ones she or he already faces.

Secure Waiting Area – Executive Law §642(2)

Requires that crime victims and other prosecution witnesses, where possible, be provided with a private room separate from the defendant and other witnesses awaiting a scheduled courtroom appearance.

Tampering with a Witness – Penal Law §§215.10, 215.11, 215.12, 215.13

Prohibits interference with the participation of a witness in a criminal proceeding by making that conduct a crime.

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

Enables survivors as well as the public to obtain information regarding the status of registered sex offenders through a free hotline (1-800-262-3257), an online subdirectory (http://criminaljustice.state.ny.us/nsor/search_index.htm) or through police authorities. (*See Sexual Assault Section.*)

Medical and Health Services

Medical and Counseling Services – Executive Law §631

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

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 the address and telephone number of the victim to such person.

Workplace Provisions

Employment and Credit Services – Executive Law §642(4)

Upon a victim's request, the district attorney or local police department must explain to the victim's employer that the need for cooperation in the prosecution of the case may necessitate absence from work. In addition, where the victim is unable to meet obligations to a creditor, the district attorney or law enforcement agency should provide information about the circumstances of the crime, including the nature of any loss or injury suffered by the victim.

Protections against Employment Termination – 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 exercising any other rights or protections afforded under the law. The victim must give prior day notice and the employer may withhold wages during the period of absence. An employer who violates this provision may be found guilty of a class B misdemeanor.

Protections for Elderly or Disabled Victims

Eligibility for Financial Assistance under CVB – Executive Law §§620(22), 631(8)

Provides that an elderly (60 or older) or disabled victim of a crime who has suffered a loss or damage to personal property, but not a physical injury as a direct result of the crime, may qualify for financial assistance through CVB. Compensation may cover financial counseling, unreimbursed costs of mental health counseling, settling estates, handling guardianship concerns, replacement of essential personal property and transportation expenses incurred for court.

Reporting Financial Exploitation of the Elderly – Social Services §473(5)

Requires social services officials or designees authorized to determine the need for protective services to adults to report to law enforcement if they suspect that an elderly person is a victim of financial exploitation or other hazard.

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

Requires any residential health care facility operator, employee or medical staff member who has reasonable cause to believe that a patient has been physically abused, mistreated or neglected to report such act, unless the abuse is by another patient, to the Department of Health.

Coordination Law Enforcement Elder Abuse – Executive Law §844-b

Requires police to send a copy of the domestic violence incident report form to the New York State Committee for the Coordination of Police Services to Elderly Persons. The committee is required to report annually to the Legislature on the incidence of such reports and to recommend policies and programs to assist law enforcement, the courts and CVB in helping victims. (*See Domestic Violence Section.*)

Endangering the Welfare of an Incompetent or Physically Disabled Person & Elderly Vulnerable Person – Penal Law §§260.30, 260.32, 260.34

Creates felony level penalties against any person who assumes responsibility of taking care of an elderly person or receives monetary or other valuable compensation for providing care to such person and is found guilty of endangering the welfare of an elderly vulnerable person.

State DNA Identification Index – Executive Law §995(7)

Requires persons convicted of all felonies and certain misdemeanors including endangering the welfare of an incompetent or physically disabled person and/or an elderly vulnerable person to submit a sample of their DNA to the State databank. (*See Sexual Assault Section.*)

Enhanced Civil Penalty for Elderly Victims of Fraud – General Business Law §349-c

Authorizes the court to increase the civil penalty, not to exceed \$10,000, against a person convicted of committing illegal, deceptive or fraudulent business practices against one or more elderly persons (65 years of age or older). The elderly victim fund consisting of these supplemental civil penalties is administered and used by the Department of Law for the investigation and prosecution of consumer frauds against elderly persons.

Special State Statutory Provisions for Domestic Violence Victims

Information and Notification

Law Enforcement Notice to Victims of Domestic Violence – Criminal Procedure Law §530.11(6); Family Court Act §812(5)

Requires law enforcement and the district attorney to advise a victim of a family offense of the availability of shelter and other services in the community in addition to written notice of their legal rights and remedies including the right to file for an order of 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(h)

Requires hospitals providing treatment to alleged victims of family offenses to provide a victim's rights notice.

Financial Assistance

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

Provides emergency awards from the Crime Victims Compensation Board (CVB) to victims where undue hardship will result to the claimant if immediate payment is not made. Amount of each emergency award does not exceed \$500 (maximum of \$1,500), which is deducted from any final award made. Local crime victim service programs are authorized to provide emergency awards to victims for shelter costs and security services, among other needs, in the amount of \$500. Provides that victims of crime including domestic violence may seek reasonable relocation expenses not exceeding \$2,500 from CVB.

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

Entitles the prevailing party in a custody hearing to file for reimbursement of expenses, attorney's fees, investigative fees, expenses for witnesses, travel and child care during the course of the proceedings. A parent fleeing domestic violence, mistreatment or abuse of a child or sibling will not be assessed these costs, unless the court finds otherwise.

Foreclosure Protection – NY CLS Domestic Relations Law Appx §1400.5(b)

Prohibits foreclosure on a mortgage of a primary residence to secure payment in a matrimonial action from a victim.

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

Enables applicants and recipients of general welfare benefits who are screened as domestic violence victims to obtain a waiver from program requirements that might endanger their safety and the safety of their children, including residency rules, child support cooperation requirements, employment and work training regulations or the requirement to establish the paternity of the child(ren). Victims of domestic violence can apply for a waiver from the 60- month time limit on receiving cash assistance if the applicant is unable to work or participate in a training program due to physical or mental disability caused by domestic violence or because she or he is needed in the home to care for a child who has a disability (does not have to be a long-term disability) caused by domestic violence. The law provides for confidential screening by social services for domestic violence and referral to a domestic violence liaison and services. Statutory provisions forbid the release of private information to any outside party or governmental agency unless the information is required to be disclosed by law or the applicant authorizes release in writing.

Unemployment Benefits – Labor Law §593

Provides that a victim of domestic violence may qualify for unemployment benefits if she or he left their job as a result of circumstances directly related to the abuse.

Access to Justice

Domestic Violence Incident Report (DIR) – Criminal Procedure Law §§140.10(5), 530.11(6); Executive Law §§214-b(a), 837(15)

Requires police officers on the local, state and county levels to prepare and file a written report of the domestic violence incident whether or not an arrest has been made. The DIR, on a standardized form developed by the Division of Criminal Justice Services (DCJS) with consultation with the State Police and the Office for the Prevention of Domestic Violence (OPDV), must include any statements made by the victim and by any witness. The report is to be kept on file by the law enforcement agency for a minimum of four years. A free copy of the DIR must be given to the victim at the scene. A domestic incident can include any disturbance, dispute, violence, threatened or actual, between members of the same family or household including persons related by blood or marriage; persons formerly married to one another; persons who have a child in common regardless of whether such persons have been married or lived together at any time. (*See Criminal Procedure Law §530.11(1) and Family Court Act §812(1).*) (According to the Office for the Prevention of Domestic Violence, a DIR may also be filed according to police department policy where there is violence or an offense between current or former dating partners or anyone who lives or has lived in the same household.)

Mandatory Arrest and Primary Physical Aggressor – Criminal Procedure Law §140.10(4)

Requires an arrest in certain circumstances involving family/household members. In felony cases, the police must arrest the abuser. If the police find that a misdemeanor constituting a family offense was committed, they are required to make an arrest unless the victim specifically asks the police not to make the arrest. In cases where the police has reasonable cause to believe that more than one family/household member committed a misdemeanor family offense, the officer is not required to arrest both parties, only the primary physical aggressor. Specific guidelines to assist in identifying the aggressor include the extent of injuries, history of domestic violence and whether one party acted in self-defense. (*Sunsets Sept. 1, 2007*)

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: refrain from contacting the victim; refrain from future acts of harassment, intimidation, violence; physically leave the home; not possess any firearms; pay restitution; continue health insurance coverage; pay for property damage; refrain from using alcohol or drugs; adhere to visitation restrictions; refrain from intentionally injuring or killing a companion animal. Depending on the relationship (e.g., current or former spouse, related by blood or persons having a child in common), a victim can seek relief from criminal court and from family court if the offense committed is a family offense. Orders of protection in family court address issues relating to custody, visitation and child support and protection and establish rules on the use of personal property. (*See also Family Court Act §§ 446, 551, 656, 1056.*) 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(3), 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)

Both family and criminal court have jurisdiction over designated family offenses (disorderly conduct, harassment, aggravated harassment, stalking, menacing, reckless endangerment, assault, attempted assault). When family court is not in session, criminal court may exercise jurisdiction over family offenses. Family offenses are defined as offenses committed by spouses or former spouses, or between parent and child or between members of the same family or household (persons related by

consanguinity or affinity; legally married; formerly married; persons having a child in common, regardless of whether persons have been married or have ever lived together).

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.

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

Establishes the computerized statewide registry of orders of protection and warrants, containing orders of protection and related bench and arrest warrants issued in criminal and family courts for family offenses; matrimonial, child support, paternity and child custody cases; non-family offense cases brought between intimate partners; special orders of conditions in criminal cases, where a defendant is found not responsible by reason of mental disease or defect, as defined by section 459-a of the social services law; youthful offender cases; and out-of-state orders of protection. Criminal courts are required to enter into the registry any order of protection for domestic violence victims. A person having an out-of-state court order of protection may file the order with the clerk of the relevant court in the State without payment of a fee and the information will be entered onto the registry. However, out-of-state orders do not have to be entered into the registry in order to be enforced.

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; making a new order; ordering the respondent to pay the victim's counsel fees, ordering the revocation of a firearm license; 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 an indigent person in court proceedings involving a family offense, custody and visitation, paternity, child welfare and contempt matters. 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 §76-g et. seq.

Allows the court, in making a custody determination, to not penalize a parent who fled with a child from the custodial parent in order to avoid domestic violence, abuse or mistreatment. However, the court can enforce an order for the return of the child.

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

Authorizes the criminal court to exercise temporary emergency custody jurisdiction when a child, sibling or parent is in danger. 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 domestic violence upon the best interests of the child, along with other relevant facts, in child support and custody visitation determinations.

Statute of Limitation for Filing a Civil Claim Against Perpetrator of an Assault – 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.

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

Requires the court to suspend a firearm license, order respondent ineligible and seek the surrender of any firearm upon the issuance of a temporary order of protection where a defendant or 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, behavior constituting a violent felony offense; or the defendant has a prior conviction of stalking.

License revocation, order of ineligibility and firearm surrender is mandatory following a felony conviction in criminal court; family court disposition in instances where the conduct resulting in the order of protection involves serious physical injury, the use or threatened use of a deadly weapon or dangerous instrument, behavior constituting a violent felony; or where the court finds that the respondent willfully violated any order of protection involving the infliction of serious injury, the use or threatened use of a deadly weapon or instrument; behavior constituting any violent felony offense; or behavior constituting any degree of stalking.

The court may suspend or revoke an existing firearm license, order the offender ineligible for such a license and order the immediate surrender of firearms where it finds "a substantial risk" that the offender may use or threaten to use a firearm unlawfully against the person or persons for whose protection the order of protection was issued. The order of protection must specify the place, date and time of surrender and where possible a description of the weapons in respondent's possession.

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

Authorizes the court to keep the victim'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 or a person in need of suspension. The court is required to designate another person such as the court clerk 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 upon receipt of a valid order of protection against another person covered by the same policy.

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 non-residential services including but not limited to, counseling, information and referral services, advocacy, community education, outreach activities and hotline services to a victim of domestic violence regardless of whether she or he is eligible for public assistance.

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

Requires hospitals and diagnostic and treatment centers to disclose information concerning the affects of family violence and services available to pregnant women and parents of newborns.

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 and OPDV to develop a protocol to identify positive tested individuals or their partners who may be victims of domestic violence.

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

Requires any residential health care facility operator, employee or medical staff member who has reasonable cause to believe that a patient has been physically abused, mistreated or neglected to report such an act, unless the abuse is by another patient, to the Department of Health.

Workplace Provisions

Reasonable Accommodations for Disability – Executive Law §§292(21-e), 296(3)

Provides persons who suffer from long-term physical or mental injuries, such as post-traumatic stress disorder and depression to qualify as a disabled individual eligible for “reasonable accommodations” at the workplace to protect the employee’s health and security. Thus, a domestic violence victim may qualify for “reasonable accommodations” if as a result of abuse they suffer from the above symptoms.

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.

*Labor Law §27-b, effective March 4, 2007

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. An employer who violates this provision may be found guilty of a class B misdemeanor.

Special State Statutory Provisions for Victims of Rape and Sexual Offenses

Information and Notification

Postings of Crime Victims Rights Information – Executive Law §625-a

Requires every general hospital providing emergency medical care and police stations to prominently display in its emergency or waiting rooms posters on crime victims' rights and provide printed cards with contact information for victim services and the Crime Victims Compensation Board (CVB), including CVB applications.

Information on the Availability of a Rape Crisis Center and Advocate – Public Health Law §2805-i; Executive Law §641

Requires health care facilities, upon a victim's request, to contact a rape crisis center to arrange for an advocate to accompany the survivor through the sexual offense examination. The facility must also coordinate non-medical services for victims who request these services. Victims should also be notified of relevant criminal justice and law enforcement proceedings related to their case and of ways in which law enforcement and district attorney offices can protect them from intimidation.

Financial Assistance

Extension to Reporting Requirements – Executive Law §631(1)

Allows victims of sexual offenses to report the crime to the proper authorities within a reasonable time of the offense in order to be eligible for an award from the CVB. To satisfy the reporting requirement and receive financial assistance for out-of-pocket expenses, a report may be made to an acceptable criminal justice agency which includes family court, a governmental agency responsible for child and/or adult protective services, or a medical facility that provides a forensic physical examination for victims of rape and sexual assault, in addition to a police department or a district attorney's office. The victim's emotional, mental, physical and family circumstances will be considered in deciding what is a "reasonable" amount of time to report.

Access to Justice

Secure Interview Area – Executive Law §642(2-a)

Requires police departments, district attorney offices and other agencies to provide a private setting for interviewing victims of sex offenses.

Rape Crisis Counselor Confidentiality – Civil Practice Law §4510(b)

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 or the rape crisis program. Disclosing information to an insurance representative or an employee of CVB for compensation does not waive this privilege.

Sex Offenses – Penal Law Article 130

Defines various criminal sex offenses including sexual misconduct, rape, sexual abuse, forcible touching, female genital mutilation and facilitating a sex offense with a controlled substance. Lack of consent is an element in every criminal sexual act. It results from force or threatened use of force or incapacity. Generally, a person is considered incapable of consent when she or he is less than seventeen years of age; mentally disabled or incapacitated; physically helpless or committed to the care and custody of a correctional institution, hospital or facility of the Office of Children and Family Services.

Drug Facilitated Sexual Offense – Penal Law §130.90

Provides that committing a sex offense by using illegal drugs (including GHB and other contraband, also known as “date rape drugs”) is a D level felony. It is illegal for an individual to knowingly and unlawfully possess a controlled substance or prescription drug; administer that substance to another without the person’s consent and with the intent to commit a felonious sexual offense; and commit or attempt to commit such a felony.

DNA State Databank – Executive Law §§995(7), 995-c(3)

Requires a person convicted of a sexual offense to submit a DNA sample to the State databank. Samples are also required from those convicted of other felonies and some misdemeanors.

Polygraph Test and Stress Evaluation – Criminal Procedure Law §160.45

Forbids a district attorney, police officer or law enforcement agency employee, to require a victim of a sexual assault to undergo a polygraph test or psychological stress evaluator examination.

Rape Shield Law – Past Sexual Conduct – Criminal Procedure Law §§60.42, 60.43

Bars the introduction of reputation evidence about the sexual history and conduct of the victim unless what may be at issue in the case is direct evidence of the source of semen, pregnancy or disease; relates to specific sexual conduct with the defendant; proves that the victim has been convicted of a prostitution offense (*Penal Law §230.00*) within three years of the case; or rebuts the district attorney’s claim that the victim was not sexually active during a given time. The court may determine whether the evidence in question is relevant and, if so, whether or not the potential prejudicial impact of the evidence outweighs its relevance (or admissible in the interest of justice).

Manner of Dress – Criminal Procedure Law §60.48

Bars the introduction of evidence relating to the manner in which a victim was dressed at the time of the offense in the prosecution for any sex offense or attempt to commit such an offense, unless the court finds it to be relevant and admissible in the interest of justice.

NYS Sex Offender Act and Registry – Megan’s Law – Correction Law Article 6-C (§168 et seq.)

Requires certain offenders on parole or probation or imprisoned for a sex offense to register with the Division of Criminal Justice Services (DCJS). Duration and manner of registration varies depending on risk level designation of offender. Level one designation requires offenders to register for 20 years while level two and three offenders must register for life. After 30 years, certain level two offenders may petition for relief from registering. Registry enables survivors as well as the public to obtain information regarding the status of registered sex offenders through a free hotline (800-262-3257), an online subdirectory of level two and three predators (http://criminaljustice.state.ny.us/nsor/search_index.htm) or through police authorities. Degree of available information is dependent upon risk level designation of offenders.

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

Enables victims to file a civil lawsuit against their attacker for physical, psychological or other injury or conditions suffered as a result of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree and course of sexual conduct against a child in the first degree (class B felony sex crimes) within five years of the commission of the offense. There is no requirement that a criminal charge be brought or a criminal conviction be obtained as a condition of bringing a civil cause of action. However, where an criminal action is brought, the victim has five years from the termination of the criminal action, whether it ended in conviction or acquittal, to commence the civil proceeding.

Medical and Health Services

Treatment of Sexual Assault Survivors and Forensic Examination – Executive Law §631(13); Public Health Law §2805-i (4-b)

Authorizes any licensed health care provider, accredited hospital or accredited sexual assault examiner program to provide services to a victim of sexual assault free of charge and to directly bill CVB. Thus, practitioners provide victims of rape and/or a sexual offense with a free forensic rape examination which includes any laboratory tests and pharmaceuticals directly associated with the examination as well as a limited supply of HIV prophylaxis at no charge to the victim. A sexual assault survivor must be advised orally and in writing that she or he may decline to provide or assign any private health insurance benefits if they believe that disclosure of this information would put their privacy or safety at risk. Selected hospitals in the forensic examiner program must establish certain protocols to serve victims of sexual assault, such as providing a registered nurse, nurse practitioner or physician specially trained in forensic evidence within 60 minutes of a victim arriving at the

hospital. These hospitals are required to provide a private room designated for such examinations, a shower after the exam, change of clothing, follow-up information and counseling and medical treatment referrals.

Health Services for Victims of Sexual Assault – Executive Law §631(2), (13)

Authorizes CVB to provide compensation to survivors of sexual assault for other medical services *not* covered by the forensic examination, such as counseling, laboratory tests, pharmaceuticals and/or follow-up HIV post-exposure prophylaxis.

Emergency Contraception – Public Health Law §2805-p

Requires hospitals treating rape victims to provide written information on emergency contraception and orally inform such patients about the efficacy of it. If requested, the hospital must also provide emergency contraception to a survivor unless medically contraindicated.

Collection of Forensic Evidence – Public Health Law §2805-i (1), (2)

Provides that hospitals treating alleged victims of a sexual offense must collect forensic evidence for victims who consent to having such evidence collected, including slides, cotton swabs and clothing and maintain the chain of custody in the event the evidence is needed for prosecution. Unless the survivor asks the hospital not to store it, the hospital must keep the evidence safe for 30 days and cannot turn privileged evidence over to police without survivor's consent.

HIV Testing

▶ **HIV Testing of Sexual Assault Perpetrator – Criminal Procedure Law §390.15; Public Health Law §2785**

Allows a victim to submit a written request to the court for HIV testing of certain convicted felons. The court must order the test, unless it holds a hearing and determines the applicant is not the victim of the offense. Test results shall be communicated to the victim and defendant only. Redisclosure is restricted to certain parties enumerated under the law (e.g., victim's physician). In some instances, a court may order disclosure of confidential HIV related information where there is compelling need for the adjudication of a criminal or civil proceeding; clear and imminent danger to an individual or public health; or other factors. The court must provide written findings of fact, and shall assess the need for disclosure against privacy interests. The court order authorizing disclosure will limit such disclosure to information necessary, to specific people, and prohibit redisclosure.

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

Provides that no report, paper, photo or court document, or portion thereof, in the custody of a public officer or employee, which identifies a victim of a sexual offense shall be made available for public inspection. Generally, requires that the identity of such victim or HIV transmission-related offense 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 sue for a survivor of a sexual offense or alleged transmission of HIV whose identity was improperly revealed.

Confidentiality of Reports and Information on Sexually Transmitted Diseases – Public Health Law §2306

Requires the Department of Health and health care facilities to keep all records and information pertaining to sexually transmitted diseases confidential, unless evidence, which is otherwise admissible, is ordered by the court to be disclosed in a criminal proceeding, in a child protective proceeding to the prosecution and defense, or in a child protective proceeding where the subject consents to disclosure to the petitioner, respondent and law guardian.

Safety Provisions

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

Requires the State Department of Education in conjunction with DCJS 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

Requires every college in the State to inform incoming students about sexual assault and encourage students to report these incidents. Students should be provided with information regarding supportive services, school procedures for dealing with sex offenses and the applicable laws.

Student Access to Campus Crime Statistics – Education Law §6433 (See also 20 U.S.C. 1092(f))

Requires NYS colleges and universities receiving State funds to provide students and incoming students information on how to access campus crime statistics, including sexual assaults.

Special State Statutory Provisions for Victims of Stalking

Financial Assistance

Compensation – Executive Law §631(11), (12)

Establishes eligibility for compensation from the Crime Victims Compensation Board (CVB) for certain victims of stalking, kidnapping, unlawful imprisonment, harassment, criminal contempt and menacing who have *not* been physically injured as a direct result of the crime. Compensation may cover loss of earnings or support; cost of counseling; the unreimbursed cost of repair or replacement of essential personal property that has been lost, damaged or destroyed; cost for security devices to enhance the personal protection of the victim; transportation expenses incurred for necessary court appearances and job or occupational training.

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

Provides emergency awards from CVB to victims where undue hardship will result to the claimant if immediate payment is not made. Amount of each emergency award cannot exceed \$500 (maximum of \$1,500), which is deducted from any final award made. Local crime victim service programs are authorized to provide emergency awards to victims for shelter costs and security services, among other needs, in the amount of \$500. Enables victims of stalking and other crimes to seek reasonable relocation expenses not exceeding \$2,500 from CVB.

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 of 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 (related by blood or marriage, including former spouses and individuals with a child in common) 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 Practice of Video Voyeurism and 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.

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.

Harassment by Mechanical or Electronic Means – Penal Law §240.30

Makes it a misdemeanor for a person, with intent to harass, annoy or threaten, to anonymously or otherwise communicate by telephone or any mechanical or electronic means in a manner likely to cause annoyance or alarm to another person.

Special State Statutory Provisions for Child Abuse, Abduction and Exploitation

Financial Assistance

Compensation – Executive Law §627(3)

Creates a rebuttable presumption that where a child is missing for seven days, the child is considered a victim of a crime enabling family members to seek assistance from the Crime Victims Compensation Board (CVB).

Access to Justice

Abandonment of a Child & Endangering the Welfare of a Child Defense – Abandoned Infant Protection Act – Penal Law §§260.03, 260.15

Creates an affirmative defense against abandonment of a child and/or endangering the welfare of a child (§260.10) for a parent, guardian, or other person legally responsible for the care or custody of a child who intended to abandon the child not more than five days old, as long as the legally responsible person, intended that the child be safe from physical injury and cared for in an appropriate manner, left the child with an appropriate person or in a suitable location and promptly notified an appropriate person of the child's location.

Reckless Assault – Shaken Baby Syndrome – “Cynthia’s Law” – Penal Law §120.02; Public Health Law §2745

Creates a class D felony for a person who seriously injures the brain of a child less than five years old by shaking, slamming or throwing the child. The Department of Health is responsible for developing and creating public educational and informational materials focusing on the harmful effects that may result from shaking infants and young children.

*Effective November 1, 2006

Guidelines for Fair Treatment of Child Victims as Witnesses – Executive Law §642-a

Sets forth special provisions for child victim witnesses to minimize the stress and trauma on the child. For example, it limits the number and length of court engagements and allows for the presence of a supportive person such as a social worker, rape crisis counselor or psychologist during a child's (12 years of age or less) testimony. In addition, a child witness should be permitted in the discretion of the court to use anatomically correct dolls and drawings.

Testifying by Means of Closed-Circuit Television – Criminal Procedure Law §§65.00, 65.10, 65.20, 65.30

Authorizes the court to take the testimony of a child witness, 14 years of age or less, by means of live, two-way closed circuit television upon a court finding that the child is vulnerable. (*Sunsets September 1, 2007*)

Videotaped Testimony of Child Witness in a Grand Jury Proceeding – Criminal Procedure Law §§190.30(4), 190.32(1)(a-b), (2)

Allows for the testimony or examination by a district attorney of child victim, 12 years of age or less, to be videotaped and entered into evidence during grand jury proceedings. The prosecutor may ask the court for similar treatment if a witness over 12 years of age would suffer severe emotional or mental harm.

Providing Emotional Support to a Child Witness in a Grand Jury Proceeding – Criminal Procedure Law §190.25(3)(h), 190.32(5)(c)

Allows for the presence of a social worker, rape crisis counselor, psychologist or other professional providing emotional support to a child witness, 12 years of age or younger, during a grand jury proceeding.

Testifying by Means of an Anatomically Correct Doll – Criminal Procedure Law §60.44

Provides that the court may allow a child, 16 years of age or younger, to use an anatomically correct doll in testifying at certain criminal proceedings.

DNA State Databank – Executive Law §§995(7), 995-c(3)

Requires a person convicted of sex offenses including the promotion or possession of a child in an obscene sexual performance and kidnapping, among other crimes (misdemeanors and felonies), to submit a sample of their DNA to the State databank.

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

Provides that a court will not assess fees or costs against a parent where it is convinced that she or he fled from a custodial parent with a child to avoid domestic violence, abuse or mistreatment, unless clearly appropriate. This only applies in cases where the court declines jurisdiction and does not apply to the final custody determination. Additionally, the court can enforce an order for the return of the child. Where the parent has fled to another country or is returning to New York from another country with children, the Hague Convention on the Civil Aspects of Child Abduction (*International Child Abduction Remedies Act (1988), Public Law 100-300*) may apply.

Medical and Health Services

Access to Clinical Mental Health Records – Mental Hygiene Law §33.13(c)(9)(ii)

Allows for persons and agencies needing information to locate missing persons who may be hospitalized to obtain limited clinical information in an effort to identify such persons with the consent of the Commissioner. Any disclosure will be limited to the information necessary for the reason of disclosure. Information disclosed must be kept confidential.

Access to Dental Records – Executive Law §838(5)

Allows for a family member or next of kin to authorize the release of the missing person's dental records, including x-rays, to the coroner's office as soon as the person has been missing for 30 days. The dental records will be compared with those received from the county medical examiner or coroner. In the absence of a next of kin, police may execute a written declaration to the same effect.

Recovering and Preventing Missing Children

Missing and Exploited Children Clearinghouse – Executive Law §837-f

Creates a missing and exploited children clearinghouse within the Division of Criminal Justice Services (DCJS) to coordinate efforts to protect children from abduction and to locate and recover missing children in NYS. Its activities include a database of current investigations of missing children, case management, a toll-free, twenty-four hour hotline for the public to provide information concerning missing children and an information outreach campaign. Given parental consent, a bulletin on missing children may be disseminated to every public and private school in the State. The clearinghouse also develops guidelines on the transmission and publication of biographical information and pictures of missing children to State agencies, departments and the Legislature to use in printing.

Statewide Central Register for Missing Children – Executive Law §837-e

Requires the names of missing children along with identifying information such as photographs, blood type, dental information and fingerprints to be filed in a statewide register within DCJS which is compatible with the national crime database. If DCJS has reason to believe that a missing child is currently enrolled in and attending a New York State school, it must notify the school and such school must cooperate.

Missing and Exploited Children Clearinghouse Fund – State Finance Law §92-w; Tax Law §628

Enables a taxpayer to designate a portion of his or her tax refund as a gift to the clearinghouse fund to support prevention education, investigative endeavors and outreach.

Responding to Missing Children – Amber Alert – Executive Law §837-f(14)

Creates a prompt notification and communications response plan by the State police and other agencies for use by local law enforcement and others. Information on a missing child may be immediately provided orally, electronically or by facsimile transmission to radio stations and other media outlets for broadcast and forwarded electronically to Internet and mobile service providers for further release. No dispatch of information concerning a missing child will take place if the police determine that the disclosure may jeopardize the investigation or safety of the child.

Internet Posting – Executive Law §843(3)

Allows the photo and identifying information of missing children who resided in New York at the time of their disappearance or whose parent resides in the State to be posted on the homepage of DCJS.

Closed Cases – Executive Law §837-m

Requires police to report closed cases of missing children to the clearinghouse within DCJS at least semi-annually, providing information on children arrested, found deceased, or victimized, as well as information on the abductor or killer.

Social Services and School Responsibilities

Central Register of Child Abuse and Maltreatment – Social Services Law §422

Establishes a statewide central register of child abuse and maltreatment with a toll-free, twenty-four hour hotline for anyone to call, whether mandated or not, to provide information on child abuse and maltreatment. A report alleging abuse is immediately transmitted orally or electronically to local child protective services for an investigation. Additionally, the register must identify any prior reports on the subject. The register maintains all the information in the report including a record of the plan for rehabilitative services, the final disposition of the case with services offered and accepted and the identifying information, dates and circumstances of any person requesting or receiving information from the register. Reports as well as any photographs are deemed confidential; they are available to a limited number of authorized persons. The statute provides for the disposition of unfounded reports and the expungement of reports 10 years after the eighteenth birthday of the youngest child named in the report.

Mandatory Reporters of Suspected Child Abuse, Neglect or Maltreatment – Social Services Law §§413, 420

Requires certain persons and officials in a professional or official capacity such as teachers, social service workers, school officials, law enforcement officials, registered nurses, physicians, medical examiners and day care center workers to report suspected child abuse, maltreatment or neglect to the statewide central register of child abuse and maltreatment. Willful failure on the part of any person required to report a case of suspected abuse is a class A misdemeanor, and may be the basis for a civil action for damages.

Mandated Reporter Immunity – Social Services Law §419

Protects mandated reporters from any civil or criminal liability when they make a report in good faith and within the scope of their employment and official duties.

Reporting Suspected Child Abuse, Neglect or Maltreatment – Social Services Law §414

Authorizes any person, including those who are not mandated reporters of child abuse or maltreatment, with reasonable cause to suspect that a child is being abused or maltreated to make a report to the central register.

Records, Reports and Duties of Government and Social Service Agencies – Social Services Law §372(7)

Mandates that any agency, society, institution or organization caring for children or any primary or secondary school that enrolls any child who may appear to be a missing person to contact the statewide central register for missing children within DCJS immediately.

Fatality Review Teams – Social Services Law §422-b

Authorizes the State Office of Children and Family Services to approve the creation of a fatality review team at a local and regional level to investigate the death of a child whose care and custody or guardianship had been transferred to an authorized agency or in cases where a report has been made to the State central register involving the death of a child.

Prevention Education – Education Law §803-a

Requires all pupils from kindergarten to eighth grade in public schools to receive instruction on preventing abduction.

School Absences – Attendance Policy – Education Law §3213(2)(c), (d)

Mandates elementary schools to alert parents of unreported absences, if such notification is desired. This provision allows families to begin their search for a missing child as soon as they realize that she or he did not arrive at school as expected.

School Records and Reporting – Education Law §§3212(2)(a), 3222(4)

Requires school authorities to inquire with the central register within DCJS when a child is enrolled by a parent or guardian without evidence of age and other required information. A school must flag the record of any child reported missing by the register and report to local law enforcement and DCJS any request concerning the flagged record or information as to the whereabouts of a missing child.

Access to Campus Crime Statistics and Investigations of Violent Felonies – Education Law §§6433, 6434

Requires each college receiving State aid to provide in their campus catalogs and handbooks how to access campus crime statistics that are filed with the U.S. Department of Education. Colleges must also include the campus crime statistics website for the U.S. Department of Education and the phone number of a campus contact who can provide crime statistics. A hard copy of a college's crime statistics report must be mailed within 10 days of a request. Institutions of higher learning are also required to have plans to investigate reports of violent felonies and missing students on campus and to cooperate with local law enforcement.

Birth Records – Public Health Law §§4100(2)(h)(i), 4170(h), 4174(8)

Requires the New York State and New York City Departments of Health, upon notification by DCJS, to flag the birth certificate record of a person born in the State that is considered missing. Requests concerning flagged birth records must immediately be reported to local law enforcement and DCJS. For in-person requests of flagged birth certificates, the person seeking the record is required to provide their name, address, phone number, Social Security number (SSN) and driver's license or other acceptable form of identification. Official personnel must also make note of the physical description of the person making the request.

Special State Statutory Provisions for Victims of Drunk Driving

Financial Assistance

Compensation for Out-of-Pocket Expenses – Executive Law §631(2)

Allows for an eligible claimant to receive compensation from the Crime Victims Compensation Board (CVB) for out-of-pocket expenses, not exceeding \$2,500, incurred for the costs of crime scene clean up. (A vehicle can be deemed a crime scene.)

Access to Justice

Vehicular Assault in the Second and First Degree – “Vasean’s Law” – Penal Law §§120.03, 120.04

Criminalizes the act of driving while under the influence of drugs or alcohol and causing serious physical injury. After it is established that the driver caused serious injury or death, the statute provides a rebuttable presumption that the serious injury or death was caused by the driver’s intoxication or drug impairment.

Arrest Without Warrant and Breathalyzer Test – Vehicle and Traffic Law §1194

Authorizes a police officer to arrest an individual, without a warrant, who is involved in a crash or collision as a result of operating a motor vehicle while under the influence of drugs or alcohol. A police officer may then subject the arrested individual to a chemical test in order to determine the individual’s blood alcohol level. Anyone driving a car in this State is considered to have given consent to take a chemical test to determine the alcohol and/or drug content in the blood. If within two hours of being stopped the person arrested refuses to take the chemical test, she or he faces license revocation or suspension.

Repeat Offenders – Sanctions– Vehicle Traffic Law §1193 (1-a)(a), (b)

Authorizes the court to sentence repeat offenders, convicted of an alcohol or drug related offense, to perform service for a public or not-for-profit organization, association or institution, in addition to or as an alternative to other penalties including imprisonment.

Victim Impact Program – Vehicle Traffic Law §1193 (1)(f), (1-a)(a), (b)

Authorizes the court to require a driver, convicted of an alcohol or drug related offense, to attend a session of a “victim impact program,” which includes presentations dealing with the impact and consequences of driving a motor vehicle while under the influence of drugs or alcohol.

Ignition Interlock Device Program – Vehicle and Traffic Law §§1198, 1193(1-a)(c); Penal Law 65.10(2)(k-1)

Creates an ignition interlock device program in certain counties of the State (Albany, Erie, Nassau, Onondaga, Monroe, Westchester and Suffolk.) However, other counties may implement such program or courts may require installation of device as a condition of probation. As a condition of probation or conditional discharge, a court may require anyone convicted of an alcohol-related offense in violation of a traffic law to install and maintain an ignition interlock device in any vehicle owned or operated by the defendant, if the court determines that such a condition is necessary to ensure public safety. Further, a judge is required to order the installation of an interlock device, for the period of probation or license revocation, on each vehicle owned by an offender who was convicted of driving while intoxicated within the preceding five years. The interlock device prevents a vehicle from starting if after the motorist breathes into it the device determines that the blood alcohol concentration is above the legal limit.

Victim Assistance Fee and Additional Surcharge – Vehicle and Traffic Law §§1809, 1809-c

Imposes a crime victim assistance fee as well as a mandatory surcharge upon a person convicted of a traffic offense, subject to some exceptions. A person convicted of a misdemeanor or felony charge for driving under the influence would be assessed a higher victim assistance fee and mandatory surcharge, as outlined in the statute, as well as an additional surcharge of \$25. These revenues support compensation and victim assistance grants of CVB.

Dram Shop Law – Compensation from Unlawful Vendors of Alcohol – General Obligations Law §11-101

Affords victims of drunk driving the right to sue anyone who unlawfully sold or helped obtain alcohol for the intoxicated person who committed the crime or violation. If victim dies, family can sue driver. If driver dies, victim or family can sue his or her estate.

Prevention

Drivers' Education in Schools – Education Law §806-a

Requires school districts providing drivers' education courses to include instruction on the hazards, consequences and penalties of impaired driving.

Special State Statutory Provisions for Victims of Identity Theft and Fraud

Information and Notification

Security Breach and Notification – General Business Law § 899-aa; State Technology Law §208

Requires business entities and others who own or license computerized data to notify New Yorkers whose private information was or was reasonably believed to have been acquired by another without authorization. The notice must contain a description of the categories of information breached and be issued to the affected persons by one of the following methods: a) written notice, b) electronic notice, or c) telephone notification. The entity must also inform the Office of the NYS Attorney General, the Consumer Protection Board and the NYS Office of Cyber Security & Critical Infrastructure Coordination of the timing, content and distribution of the notices and approximate number of affected persons. Where more than 5,000 New Yorkers are affected, the business or State entity must also notify consumer reporting agencies. The law also provides for substitute notice to consumers if the State entity or business demonstrates to the Attorney General that the cost of providing regular notice would exceed \$250,000, the affected class of persons exceeds 500,000 or the entity or business does not have sufficient contact information. Where substitute notice is used, it must consist of all of the following, as applicable: e-mail notice, conspicuous posting on the entity's website and notification to statewide media.

Financial Assistance

Compensation Awards – Executive Law §§631(8), 621(22)

Allows for elderly or disabled victims of fraud to seek compensation from the Crime Victims Compensation Board (CVB) to cover out-of-pocket expenses relating to the cost of financial counseling. Compensation may cover the analysis of a victim's financial situation such as income producing capacity, budget and debt management, settling estates, public assistance and other benefits and accessing insurance.

Restitution for Victims of Identity Theft – Penal Law §60.27(1), (2)

Authorizes the court to order a convicted defendant to pay restitution to a victim of identity theft who has suffered economic losses or damages from the "fruits of the offense." Victims may also seek restitution for any actual or consequential financial losses incurred as a result of adverse actions taken against his or her.

Consumer Protection from Deceptive Business Practices – General Business Law §349

Prohibits deceptive acts or practices (e.g., misleading or dishonest acts) in conduct of any business, trade or commerce or in the furnishing of any service. The Attorney General may bring an action to enjoin or stop such unlawful activity and to obtain restitution for victims. In addition, any person harmed by a deceptive practice may bring a civil action to recover actual damages or \$50, which is greater. The court may increase the award of damages to an amount not exceeding three times the

actual damages up to \$1,000 if the court finds that the defendant willfully or knowingly violated the statute. The court may also award reasonable attorney's fees to the prevailing consumer.

Home Improvement Contracts and Frauds – General Business Law §772

Authorizes homeowners who were induced to contract for home improvement services based on a contractor's false verbal or written statements to sue for actual damages, a penalty of \$500 and reasonable attorney's fees.

Employment and Credit Services – Executive Law §642(4)

Permits victims of financial crimes to request the assistance of law enforcement agencies to explain to creditors on their behalf the nature of the crime as well as the extent of loss or injury suffered which has prevented them from fulfilling their financial responsibilities.

Access to Justice

Identity Theft as a Criminal Offense – Penal Law §§190.77 – 190.84

Criminalizes identity theft and unlawful possession of personal identification. Provides for misdemeanor and felony penalties when a person's identity is assumed in order to obtain goods, money, property or services; to cause financial loss to a person; or to unlawfully possess certain types of personal identifying information for the furtherance of a crime.

Identity Theft as a Civil Offense – General Business Law §380-s

Creates the civil violation of identity theft. No person shall knowingly and with intent to defraud, obtain, possess, transfer, use or attempt to use credit, goods or services in the name of another person without his or her consent.

Civil Liability for Identity Theft – State Fair Credit Reporting Act– General Business Law §380-l

Provides that a person who knowingly and willfully obtains personal identifying information with intent to defraud may be subject to damages pursued by the victim.

Eavesdropping and Video Surveillance Warrants for Identity Theft – Criminal Procedure Law §700.05(8)(s)

Designates the felony levels of identity theft and unlawful possession of personal identification information to the list of crimes eligible for eavesdropping and video surveillance warrants for law enforcement.

Pyramid Schemes – General Business Law §359-fff

Declares the illegality of a chain distributor scheme, also known as the pyramid scheme. Upon making an investment, a person is granted a license or the right to solicit or recruit for profit additional persons who are also asked to invest and then granted the right to solicit others.

Protection and Prevention Provisions

Security Freeze – General Business Law §380-t

Enables consumers to place a security freeze on their consumer reports thereby restricting access to their credit information by sending a written request to a consumer credit reporting agency by certified or overnight mail. No charges are permitted for victims of identity theft who present a valid copy of a police report or a signed Federal Trade Commission Identity Theft Victim Affidavit. Consumer reporting agencies are allowed to charge consumers who are not victims of identity theft a fee of up to \$5 for the removal or lifting of a freeze, the second or subsequent placement of a freeze, or the replacement of a lost PIN or password.

*Effective November 1, 2006

Disposal of Personal Records – General Business Law §399-h

Requires businesses to properly dispose of records containing personal information by shredding, destroying or otherwise making the personal identifying information unreadable.

*Effective December 4, 2006

Communication Records Privacy – General Business Law §399-DD

Prohibits the sale, fraudulent transfer or solicitation of telephone record information without written consent from the consumer.

Confidentiality of Social Security Numbers – General Business Law §399-DD

Places limits on the use and dissemination of Social Security Numbers (SSN) beginning January 1, 2008. The law prohibits the intentional communication of an individual's SSN to the general public; restricts businesses' ability to print a SSN on mailings or on any card or tag required to access products, services or benefits; prohibits businesses from requiring an individual to transmit his or her unencrypted SSN over the Internet; and requires businesses possessing SSN to implement safeguards and limit unnecessary employee access to the data.

Unsolicited Telemarketing Calls – “Do-Not-Call” – General Business Law §399-z

Prohibits telemarketers from calling consumers who have requested not to be called by registering with the “do-not-call” telemarketing registry.

Anti-Phishing – General Business Law §390-b

Prohibits the deceptive solicitation of personal information through the use of electronic communications such as a web page or e-mail.

Door-To-Door Sales – Personal Property Law §§ 425-431

Provides consumers with a three day period to cancel a contract which was entered into as a result of a door-to-door sales tactic.

Automatic Dialing Devices and Blocking by Telemarketers – General Business Law §399-p(5), (6-a)

Prohibits the placement of a call by an automatic dialing device to an emergency telephone line or any law enforcement agency. Telemarketers cannot block their names and telephone numbers from the caller identification devices used by consumers to monitor their calls.