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TRANSMITTAL: 97 INF-2

TO: Commissioners of
 Social Services

DIVISION: Services and
 Community
 Development

DATE: January 10, 1997

SUBJECT: Protective Services for Adults (PSA): Chapter 353,
 Laws of 1996: Strengthened Penalties for the Violation
 of Orders of Protection

SUGGESTED

DISTRIBUTION: Directors of Services
 Protective Services for Adults Staff
 Legal Staff
 Staff Development Coordinators

CONTACT PERSON: Any questions concerning this release should be
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ATTACHMENTS: Chapter 353, Laws of 1996 (Not Available Online)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
95 INF-10		457	Article 9-B		
95 INF-20			SSL Sections 215.51(b) & 215.52 of the Penal Law		

The purpose of this release is to inform you about the provisions of Chapter 353 of the Laws of 1996, which became effective on September 1, 1996. This law amends the Penal Law by increasing the situations in which a violation of an Order of Protection is a felony offense.

Prior to the enactment of Chapter 353, prosecutors only could bring felony charges in situations when a person violated an Order of Protection and:

1. caused physical or serious physical injury to the victim; or
2. caused damage to the property of the victim in excess of \$250; or
3. was convicted of criminal intent for violating an Order of Protection within the preceding five years.

Chapter 353 of the Laws of 1996 added a new Section 215.51(b) to the Penal Law which makes it a class E felony when a person, in violation of a duly served Order of Protection, or such order of which the person has actual knowledge because he/she was present in court when such order was issued, when he/she:

1. intentionally places or attempts to place a person for whose protection such order was issued in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm or by means of a threat or threats; or
2. intentionally places or attempts to place a person for whose protection such order was issued in reasonable fear of physical injury, serious physical injury or death by repeatedly following such person or engaging in a course of conduct or repeatedly committing acts over a period of time; or
3. intentionally places or attempts to place a person for whose protection such order was issued in reasonable fear of physical injury, serious physical injury or death when he or she communicates or causes a communication to be initiated with such person by mechanical or electronic means or otherwise, anonymously or otherwise, by telephone, or by telegraph, mail or any other form of written communication; or
4. with intent to harass, annoy, threaten or alarm a person for whose protection such order was issued, repeatedly makes telephone calls to such person, whether or not a conversation ensues, with no purpose of legitimate communication; or

5. with intent to harass, annoy, threaten or alarm a person for whose protection such order was issued, strikes, shoves, kicks or otherwise subjects such other person to physical contact or attempts or threatens to the same; or
6. by physical menace, intentionally places or attempts to place a person for whose protection such order was issued in reasonable fear of death, imminent serious physical injury or physical injury.

Chapter 353 of the Laws of 1996 also added a new Section 215.52 to the Penal Law which makes aggravated criminal contempt a class D felony. A person is guilty of aggravated criminal contempt when in violation of a duly served Order of Protection, or such order of which the defendant has actual knowledge because he or she was present in court when such order was issued, he or she intentionally or recklessly causes physical injury or serious physical injury to a person for whose protection such order was issued.

It is anticipated that these amendments will deter persons from violating Orders of Protection because of the presence of more severe criminal penalties, thereby making Orders of Protection a more effective means of protecting victims of domestic violence, including impaired adults.

Because of a local social services district's legal responsibility to assist PSA clients in securing court ordered interventions when appropriate, including applying for such interventions on behalf of impaired adults who do not have decision making capacity, it is imperative for both PSA and legal staff to become familiar with the provisions of Chapter 353 of the Laws of 1996. It is also important for PSA and legal staff of local social services districts to discuss the implications of this new law with police and sheriff's departments and the office of the district attorney in order to ensure that it is effectively utilized on behalf of impaired adults who are victims of abuse, neglect and exploitation by others. In addition to the provisions of Chapter 353, the Family Protection and Domestic Violence Intervention Act of 1994, which is discussed in 95 INF-20, contains several important provisions to strengthen the effectiveness of Orders of Protection.

Rose M. Pandozy
Deputy Commissioner
Services and Community Development