

5552

2009-2010 Regular Sessions

I N S E N A T E

May 15, 2009

Introduced by Sen. OPPENHEIMER -- read twice and ordered printed, and
when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law and the penal law, in
relation to the issuance of family offense appearance tickets for
family offenses

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivisions 2 and 3 of section 140.20 of the criminal
2 procedure law, as amended by chapter 550 of the laws of 1987, are
3 amended and a new subdivision 3-a is added to read as follows:
4 2. If the arrest is for an offense other than a class A, B, C or D
5 felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19
6 or 215.56 of the penal law OR A FAMILY OFFENSE AS DESCRIBED IN SUBDIVI-
7 SION ONE OF SECTION 530.11 OF THIS CHAPTER, the arrested person need not
8 be brought before a local criminal court as provided in subdivision one
9 OF THIS SECTION, and the procedure may instead be as follows:
10 (a) A police officer may issue and serve an appearance ticket upon the
11 arrested person and release him OR HER from custody, as prescribed in
12 subdivision two of section 150.20 OF THIS TITLE; or
13 (b) The desk officer in charge at a police station, county jail or
14 police headquarters, or any of his OR HER superior officers, may, in
15 such place fix pre-arraignment bail and, upon deposit thereof, issue and
16 serve an appearance ticket upon the arrested person and release him OR
17 HER from custody, as prescribed in section 150.30 OF THIS TITLE.
18 3. If (a) the arrest is for an offense other than a class A, B, C or D
19 felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19
20 or 215.56 of the penal law OR A FAMILY OFFENSE AS DESCRIBED IN SUBDIVI-
21 SION ONE OF SECTION 530.11 OF THIS CHAPTER, and (b) owing to unavail-
22 ability of a local criminal court the arresting police officer is unable
23 to bring the arrested person before such a court with reasonable prompt-
24 ness, either an appearance ticket must be served unconditionally upon

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD04718-01-9

1 the arrested person or pre-arraignment bail must be fixed, as prescribed
2 in subdivision two OF THIS SECTION. If pre-arraignment bail is fixed
3 but not posted, such arrested person may be temporarily held in custody
4 but must be brought before a local criminal court without unnecessary
5 delay. Nothing contained in this subdivision requires a police officer
6 to serve an appearance ticket upon an arrested person or release him OR
7 HER from custody at a time when such person appears to be under the
8 influence of alcohol, narcotics or other drug to the degree that he may
9 endanger himself, HERSELF or other persons.

10 3-A. IF THE ARREST IS MADE FOR A FAMILY OFFENSE AS DESCRIBED IN SUBDI-
11 VISION ONE OF SECTION 530.11 OF THIS CHAPTER AND AN APPEARANCE TICKET IS
12 ISSUED, THE APPEARANCE TICKET SHALL BE IN THE FORM OF A FAMILY OFFENSE
13 APPEARANCE TICKET AS DEFINED IN SUBDIVISION FORTY-FOUR OF SECTION 1.20
14 OF THIS CHAPTER.

15 S 2. Subdivisions 3 and 4 of section 140.27 of the criminal procedure
16 law, as amended by chapter 550 of the laws of 1987, are amended to read
17 as follows:

18 3. If (a) the arrest is for an offense other than a class A, B, C or D
19 felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19
20 or 215.56 of the penal law OR A FAMILY OFFENSE AS DESCRIBED IN SUBDIVI-
21 SION ONE OF SECTION 530.11 OF THIS CHAPTER and (b) owing to unavailabil-
22 ity of a local criminal court such peace officer is unable to bring or
23 cause the arrested person to be brought before such a court with reason-
24 able promptness, the arrested person must be brought to an appropriate
25 police station, county jail or police headquarters where he OR SHE must
26 be dealt with in the manner prescribed in subdivision three OR THREE-A
27 of section 140.20 OF THIS ARTICLE, as if he OR SHE had been arrested by
28 a police officer.

29 4. If the arrest is for an offense other than a class A, B, C or D
30 felony or a violation of section 130.25, 130.40, 205.10, 205.17, 205.19
31 or 215.56 of the penal law OR A FAMILY OFFENSE AS DESCRIBED IN SUBDIVI-
32 SION ONE OF SECTION 530.11 OF THIS CHAPTER, the arrested person need not
33 be brought before a local criminal court as provided in subdivision two
34 OF THIS SECTION, and the procedure may instead be as follows:

35 (a) The arresting peace officer, where he OR SHE is specially author-
36 ized by law to issue and serve an appearance ticket, may issue and serve
37 an appearance ticket upon the arrested person and release him OR HER
38 from custody; [or]

39 (b) The arresting peace officer, where he OR SHE is not specially
40 authorized by law to issue and serve an appearance ticket, may enlist
41 the aid of a police officer and request that such officer issue and
42 serve an appearance ticket upon the arrested person, and upon such issu-
43 ance and service the latter must be released from custody[.]; OR

44 (C) IF THE ARREST IS MADE FOR A FAMILY OFFENSE AS DESCRIBED IN SUBDI-
45 VISION ONE OF SECTION 530.11 OF THIS CHAPTER AND AN APPEARANCE TICKET IS
46 ISSUED, THE APPEARANCE TICKET SHALL BE IN THE FORM OF A FAMILY OFFENSE
47 APPEARANCE TICKET AS DEFINED IN SUBDIVISION FORTY-FOUR OF SECTION 1.20
48 OF THIS CHAPTER.

49 S 3. Section 1.20 of the criminal procedure law is amended by adding a
50 new subdivision 44 to read as follows:

51 44. "FAMILY OFFENSE APPEARANCE TICKET" IS AN APPEARANCE TICKET ISSUED
52 TO A PERSON ALLEGING HIS OR HER COMMISSION OF A FAMILY OFFENSE, AS
53 DESCRIBED IN SUBDIVISION ONE OF SECTION 530.11 OF THIS CHAPTER, WHICH
54 CONTAINS A DIRECTION TO SUCH PERSON NOT TO HAVE CONTACT WITH THE
55 COMPLAINING WITNESS PRIOR TO HIS OR HER APPEARANCE IN COURT.

1 S 4. Subdivision 1 of section 150.20 of the criminal procedure law, as
2 amended by chapter 550 of the laws of 1987, is amended to read as
3 follows:

4 1. Whenever a police officer is authorized pursuant to section 140.10
5 OF THIS PART to arrest a person without a warrant for an offense other
6 than a class A, B, C or D felony or a violation of section 130.25,
7 130.40, 205.10, 205.17, 205.19 or 215.56 of the penal law, he OR SHE
8 may, subject to the provisions of subdivisions three and four of section
9 150.40 OF THIS ARTICLE, instead issue to and serve upon such person an
10 appearance ticket, PROVIDED HOWEVER, THAT IF THE APPEARANCE TICKET IS
11 ISSUED FOR A FAMILY OFFENSE AS DESCRIBED IN SUBDIVISION ONE OF SECTION
12 530.11 OF THIS CHAPTER, THE APPEARANCE TICKET SHALL BE IN THE FORM OF A
13 FAMILY OFFENSE APPEARANCE TICKET AS DEFINED IN SUBDIVISION FORTY-FOUR OF
14 SECTION 1.20 OF THIS CHAPTER.

15 S 5. The penal law is amended by adding a new section 215.85 to read
16 as follows:

17 S 215.85 FAILING TO COMPLY WITH A FAMILY OFFENSE APPEARANCE TICKET.

18 1. A PERSON IS GUILTY OF FAILING TO COMPLY WITH A FAMILY OFFENSE
19 APPEARANCE TICKET WHEN, HAVING BEEN PERSONALLY SERVED WITH A FAMILY
20 OFFENSE APPEARANCE TICKET, AS DEFINED IN SUBDIVISION TWO OF THIS
21 SECTION, BASED UPON HIS OR HER ALLEGED COMMISSION OF A FAMILY OFFENSE,
22 HE OR SHE EITHER:

23 (A) DOES NOT APPEAR PERSONALLY IN THE COURT IN WHICH SUCH FAMILY
24 OFFENSE APPEARANCE TICKET IS RETURNABLE ON THE RETURN DATE THEREOF OR
25 VOLUNTARILY WITHIN THIRTY DAYS THEREAFTER; OR

26 (B) INTENTIONALLY FAILS TO COMPLY WITH THE DIRECTION CONTAINED IN THE
27 FAMILY COURT APPEARANCE TICKET NOT TO HAVE CONTACT WITH THE COMPLAINING
28 WITNESS PRIOR TO HIS OR HER APPEARANCE IN COURT.

29 2. AS USED IN THIS SECTION, A FAMILY OFFENSE APPEARANCE TICKET MEANS A
30 WRITTEN NOTICE, WHETHER REFERRED TO AS A SUMMONS OR BY ANY OTHER NAME,
31 ISSUED BY A POLICE OFFICER, PEACE OFFICER OR OTHER NON-JUDICIAL PUBLIC
32 SERVANT AUTHORIZED BY LAW TO ISSUE THE SAME, DIRECTING A DESIGNATED
33 PERSON TO APPEAR IN A DESIGNATED COURT AT A DESIGNATED FUTURE TIME IN
34 CONNECTION WITH A CRIMINAL ACTION TO BE INSTITUTED IN SUCH COURT WITH
35 RESPECT TO HIS OR HER ALLEGED COMMISSION OF A FAMILY OFFENSE AS
36 DESCRIBED IN SUBDIVISION ONE OF SECTION 530.11 OF THE CRIMINAL PROCEDURE
37 LAW, AND FURTHER DIRECTING SUCH PERSON NOT TO HAVE CONTACT WITH THE
38 COMPLAINING WITNESS PRIOR TO HIS OR HER APPEARANCE IN COURT.

39 FAILING TO COMPLY WITH PARAGRAPH (A) OF SUBDIVISION ONE OF THIS
40 SECTION IS A VIOLATION. FAILING TO COMPLY WITH PARAGRAPH (B) OF SUBDIVI-
41 SION ONE OF THIS SECTION IS A CLASS B MISDEMEANOR.

42 S 6. This act shall take effect on the first of November next succeed-
43 ing the date on which it shall have become a law.