NEW YORK STATE BAR ASSOCIATION
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MEMORANDUM IN OPPOSITION
Criminal Justice Law Section

CJS #1 May 13, 2026

S. 3394
A. 3226

By: Senator Gounardes
By: M of A Gonzalez-Rojas
Effective Date: 180 days following enactment.

AN ACT to amend the civil practice law and rules, the penal law, the criminal procedure law, the judiciary law and the executive law, in relation to anti-stalking orders.

LAW AND SECTIONS REFERRED TO: Creates Civil Procedure Law and Rules (CPLR) Article 63-B (new section§§6349 - 6357) and amends CPLR §8018; amends §§120.14 & 215.51 of the Penal Law; amends §140.10 of the Criminal Procedure Law; amends §212 of the Judiciary Law; amends §221-a of the Executive Law.

THE CRIMINAL JUSTICE SECTION OPPOSES THIS LEGISLATION

As the Criminal Justice Section of the New York State Bar Association (CJS), we are judges, prosecutors, and defense attorneys with deep experience practicing in the criminal courts across the state. Our Section brings together these across-the-aisle viewpoints and experiences to collaborate on improvements to the criminal justice system. With that breadth of experience in mind, CJS sought the review and evaluation of membership in regard to S3394-A/ A3226-A, which seeks to amend the civil practice law and rules, the penal law, the criminal procedure law, the judiciary law and the executive law in relation to "anti-stalking orders". While we appreciate the well-intended goal of protecting victims of stalking and harassment, the bill goes too far and implies due process concerns leading us to conclude that we must oppose this legislation.

Chief among our concerns is the unnecessary redundancy of a new and confusing method for securing a temporary order of protection, when these are routinely issued in criminal court for the same conduct contemplated by this legislation. We are also concerned by the conflation of civil procedure and criminal procedure terminology and process, the apparent lack of understanding of arraignment procedures and how rural jurisdictions operate, and the lack of meaningful guidance for judges regarding the evidentiary standards governing temporary *ex-parte* orders. The legislation fails to articulate a meaningful evidentiary standard for temporary *ex-parte* orders, and the only articulated standard for final orders is a fair preponderance of the evidence, which may be insufficient given the significant liberty interests and criminal contempt consequences implicated. Combined with the lack of any statutory opportunity for the accused to be heard with the right to counsel, these deficiencies raise substantial due process concerns. Further, the justification for this proposal is a misapprehension of the arrest to arraignment investigation process; there is no such burdensome and lengthy process once an arrest is made. To proceed with an accusation in criminal court, a prosecutor need only the allegations of a complainant. This, even without a sworn statement, is sufficient for the prosecution to request a temporary order of protection. Such requests are routinely granted. Finally, S3394-A/ A3226-A may encourage *ex parte* applications as it includes no guardrails to test the application yet imposes substantial civil and criminal penalties and fines.

For these reasons, expanded upon below, CJS opposes this bill.

The Legislation Is Duplicative And Likely To Cause Conflicting Orders

Temporary and final orders of protection are routinely and expeditiously issued in criminal court based solely on a complainant's allegations, often at arraignment. The Family Court Act also authorizes the issuance of orders of protection even without a criminal arrest. Criminal Courts have the authority to issue family court orders of protection when the family courts are closed. The creation of a parallel civil "anti-stalking" order risks producing multiple, overlapping orders issued by different courts, leading to confusion for parties, law enforcement, and courts alike. Conflicting orders—particularly where one court lacks jurisdiction to modify another court's order—invite inconsistent enforcement and increase the risk of unintended criminal liability.

The Legislation Misunderstands the Arrest-to-Arraignment Process

As part of the justification for this legislation, the sponsors cite the "slow-moving process" from complaint to arrest to arraignment and the pronouncement of an order of protection. In urban areas, the time between complaint to arraignment is often very truncated and by law in New York City once a person is arrested, the prosecution must file the accusatory instrument, and the person must be before the arraignment judge within twenty-four hours. Probable cause to arrest is almost universally based on a person's complaint to authorities and does not involve extensive investigation on behalf of the police. Additionally, since the implementation of bail reform in 2020, delays between arrest and arraignment are effectively nonexistent when an order of protection is requested. Prosecutors routinely seek—and courts routinely grant—temporary orders of protection. The suggestion that complainants face prolonged delays before receiving temporary orders protection is not supported by current criminal or family court practice, including in rural jurisdictions.

The Lack of Legal Standards and Due Process Protections

This legislation permits a judge to issue a temporary order of protection upon "good cause shown" and "without notice to the respondent." This lack of specificity for what might constitute “good cause” on behalf of the petitioner combined with the statutory allowance that the respondent shall not be notified, frustrates the expediency which this legislation seeks to facilitate. If the purpose of such order is the immediate cessation of prohibited behavior due to imposition of legal consequences, this lack of notice to the respondent will do nothing to facilitate that immediacy.

This lack of notice completely sets aside fundamental due process protections for notice and opportunity to be heard and then lists in paragraph three (3) subdivisions (a) through (e) a multitude of behaviors that must cease or be subject to penalties. This defies logic as it requires immediate cessation but offers no statutory imperative to inform the respondent of the legal order to cease all prohibited activity. Notice is required for the final hearing but once again this final hearing articulates only vague standards which cannot satisfy meaningful due process. Nothing in the proposed legislation defines the evidentiary burden on the complainant and the only standard announced is that the judge may issue a final order where the allegations are supported by a ‘fair preponderance of the evidence.” Additionally, after a final order, the complainant may again make an *ex parte* application for modifications to the order, which again is an application done without notice to the respondent or counsel.

This lack of due process protections is especially troubling as the enforcement of this civil order refers back to the penal law and the existing penal law sections that permit temporary and final orders for the same alleged behavior. This enforcement provision means that this civil order carries criminal penalties, which can result in up to seven (7) years of incarceration.

This absence of procedural safeguards represents a serious departure from fundamental due process principles, the right to counsel as guaranteed by the 6th Amendment and exposes respondents to significant liberty and property restrictions without meaningful judicial review.

The Proposed Remedies Raise Additional Constitutional and Practical Concerns

The remedies authorized by the bill are expansive, vague, and, in many instances, beyond a respondent’s control. Collectively, they implicate First Amendment rights, privacy interests, and due process protections, while creating significant risk of abuse.

Specific concerns include:

- Cease All Contact: Broad and ambiguous language risks criminalizing inadvertent or indirect contact, particularly in shared social or professional environments.
- Removal or Deletion of Media: Individuals cannot guarantee the complete removal of online content, especially from third-party platforms or archival sources. Such orders may also infringe protected speech.

- Surveillance Restrictions: Provisions are overly broad and fail to distinguish between unlawful surveillance and lawful conduct, including the use of security cameras.
- Control of Connected Devices: Respondents may lack authority over shared or third-party devices, making compliance impossible.
- Stay-Away Orders: Restrictions may be unworkable where locations are essential to daily life, such as workplaces.
- Legal Fees and Monetary Remedies: The bill provides no limits or standards, allowing significant financial penalties even where a petitioner achieves only minimal success. This will chill litigation and appellate review.
- Medical and Mental Health Provisions: Requirements raise causation issues, insurance barriers, HIPAA concerns, and bypass existing safeguards under New York's Mental Hygiene Law.
- Behavioral Mandates: Vague directives to "engage" or "cease" conduct invite arbitrary enforcement.

Incentivizing Ex-Parte Applications and Abuse

By authorizing sweeping remedies without clear standards or procedural protections, the bill encourages *ex parte* applications and creates incentives to use these orders as punitive tools rather than real protective measures. Violations of any order of protection carry serious criminal consequences, magnifying the harm caused by vague or conflicting directives.
This proposed bill creates an avenue to circumvent the criminal justice system and produce unconstitutionally obtained discovery that could be introduced as evidence in collateral or subsequent criminal proceedings.

Conclusion

For the foregoing reasons, the Criminal Justice Section of the New York State Bar Association opposes S3394-A/ A3226-A. The legislation is unnecessary in light of existing legal frameworks, fails to provide essential due process protections, and risks creating confusion, constitutional violations, and unjust outcomes.