

**Urging The New York State Governor and Legislature To Authorize
A Comprehensive Review of Order of Protection Abuse**

WITHDRAWN BY SPONSOR

Referred to: The Law Enforcement and Public Safety Committee (Chairman Briggs and Legislators Fabiano, Provenzano, Ronk and Wishnick)

Legislator Dean Fabiano offers the following:

WHEREAS, an order of protection serves as a necessary and important tool to protect victims of domestic violence through the provision of emergency relief in the event of imminent or actual serious physical harm; and

WHEREAS, in 2006, there were an estimated 2 to 3 million temporary restraining orders issued in the United States; and

WHEREAS, these legal documents have been increasingly misused as tools to gain leverage in custody matters; and

WHEREAS, an individual identified in an order of protection can be required to immediately vacate the house, prohibited from communicating with their children – including phone calls or email, barred from carrying a weapon which may result in a loss of a security clearance if working in the military or law enforcement, thus harming the person’s career opportunities, and imposed with substantial legal defense costs by forcing all communication be conducted through legal counsel – all without the opportunity to refute the allegation and without documented evidence of the alleged abuse; and

WHEREAS, the burden of proof for the judge is a preponderance of the evidence or a belief that there is a 51% chance that the allegations are true; and

WHEREAS, false petitions clog an already overwhelmed judicial system and cause delays in the examination of cases involving true victims and depletes crime-victim assistance resources; and

WHEREAS, in a 2006 study of emergency protective-order petitions in West Virginia, an estimated 80.6% were determined to be “false or unnecessary”; and

WHEREAS, this study further found the costs to the State for the false reports was in excess of \$18.2 million; and

Resolution No. 360 October 20, 2015

**Urging The New York State Governor and Legislature To Authorize
A Comprehensive Review of Order of Protection Abuse**

WHEREAS, in some situations, the petitioner will appear to violate the order of protection themselves by contacting the subject of the order; but as the order specifies limitations on the subject of the order and not the petitioner, it is the respondent that is subject to civil or criminal contempt for simply responding to the petitioner's communication; and

WHEREAS, the only resolve for Order of Protection Abuse is additional legal time and costs associated with a civil suit for malicious abuse of the legal system process, defamation of character and/or the intentional infliction of emotional distress; now, therefore, be it

RESOLVED, that the Ulster County Legislature urges the New York State Governor and Legislature to authorize a comprehensive review of Order of Protection Abuse and enact policies and procedures to stop the abuse and misuse of the legal system; and, be it further

RESOLVED, the Clerk of the Ulster County Legislature shall forward copies of this resolution to Governor Andrew Cuomo, Assembly and Senate Majority and Minority Leaders, Assembly and Senate Judiciary Committee Chairmen, Assembly Ways and Means Committee Chairman, Senate Finance Committee Chairman, all Ulster County elected Assemblymen and Senators and Ulster County Judges,
and moves its adoption.

ADOPTED BY THE FOLLOWING VOTE:

AYES: NOES:

Passed Committee: Law Enforcement and Public Safety Committee on October 5,
2015

FINANCIAL IMPACT:
NONE