



# ORDERS OF PROTECTION

Legal Information Series

HER JUSTICE

Summer 2019

Use of this Legal Information Guide does not in any manner constitute an attorney-client relationship between Her Justice and the user (meaning we are not your lawyers just because you have read or utilized this information). While the guide gives legal information, it is not legal advice. It is only educational. For personalized legal guidance, you should consult with a qualified attorney. If you are seeking legal advice from Her Justice, please visit our Get Help page to apply for an intake to explore whether you can become a client.

**Table of Contents:**

**Important Safety Information .....2**  
    Making a Safety Plan  
    General Safety Tips

**What is an Order of Protection? .....3**  
    Where Do I Get an Order of Protection?  
    Do I Need A Lawyer to Get and Order of Protection?

**Other Questions About Court:.....4**  
    What if I need an Interpreter in Court?  
    Will I Lose my Job if I Take Time Off to go to Court?  
    Will I Need to Pay for Anything in Court?

**How Do I Get an Order of Protection through Family Court? .....5**  
    Step-by-step Guide to Starting the Process

**How Do I Serve the Papers? .....8**

**What Happens When I Go Back to Court on the Return Date? .....10**  
    What Should I Bring to Court on the Return Date?  
    How Does a Fact-Finding Hearing Work?

**What Happens After the Court Case is Finished? .....12**  
    What If the Person Who Abused Me Violates the Order of Protection?  
    Can I Extend my Order of Protection?

**What Happens in Criminal Court? .....13**  
    What are the Differences Between Family Court and Criminal Court Orders?

## **Important Safety Information:**

Before you even go to court to get an Order of Protection, it is very important to make a Safety Plan for yourself. A Safety Plan is a checklist to help you take the steps you need to protect yourself and your family. If you need help making a safety plan check out these organizations:

[New York State Coalition Against Domestic Violence](#)  
[New York State Office for the Prevention of Domestic Violence](#)  
[The National Domestic Violence Hotline](#)

## **Here are Some General Safety Tips:**

- Always keep a copy of your Order of Protection with you (if you have one).
- If you and the person who abused you used to live together and you've stayed in that home, make sure you change the locks after the person who abused you moves out.
- Pack a bag with clothing, money, important papers, and other things you will need if you have to leave home in a hurry. Keep it ready in a safe place.
- If you can, install a security system where you live. Make sure your smoke detectors and fire extinguishers work.
- Make sure that the outside of your home (for example, the yard or hallway) is well-lit.
- Let your neighbors know that the person who abused you does not live with you anymore. Ask them to call the police if they see the person near or in your home, or with your children.
- Tell anyone who takes care of your children, including their school, about the Order of Protection. Tell them that they should call the police if the person who abused you tries to take your children.
- Stay away from places you used to go with the person who abused you.

## **What is an Order of Protection?**

If someone you are close to is abusing you or your children, you can ask the Court for an “Order of Protection.” An Order of Protection is designed to protect you and your family from the abusive person. It is a list of rules that the person who abused you must follow.

If the person who abused you doesn’t follow the rules in the Order of Protection, you can report this to the police and they may be arrested.

## **Where Do I Get an Order of Protection?**

You can get an order of protection in Family Court, Criminal Court, or both, depending on your situation.

You can go to **Family Court** if the person you need protection from is:

- Your spouse or your ex-spouse
- The parent of your children, even if you were never married
- Related to you by blood, marriage or adoption (for example, your parent, child, uncle or cousin)
- Someone you have or had an “intimate relationship” with, such as a boyfriend, girlfriend, or ex-boyfriend/girlfriend

**If the person who is abusing you is violent or makes threats, call the police.** If they’re arrested, the case will go to **Criminal Court**. An Order of Protection from Criminal Court is similar to an Order of Protection from Family Court, but the process of getting the orders is very different depending on the Court.

Most of this guide explains how to get an Order of Protection by going through the Family Court. This is how you’ll need to get the Order of Protection unless the person who is abusing you is arrested and the District Attorney brings a case against them in the Criminal Court. For an explanation of how the process works in Criminal Court, go to page 12.

## **Do I Need a Lawyer to Get an Order of Protection?**

In **Family Court**, you **don’t** need a lawyer. However, you do have a right to have a lawyer.

If you want a lawyer but can’t afford to pay for a lawyer, let the Judge know. If you show the Judge you don’t have enough money to get a private lawyer, the Judge must give you a free lawyer. The Judge can also point you in the direction of some organizations that might be able to help you find free legal help and representation.

## **Other Questions about Court:**

- **What If I Need an Interpreter in Court?**

The courts will give you an interpreter if you'd like one. If English isn't your first language and you'd be more comfortable in a different language, you should tell the clerk right away.

Spanish language interpreters are in court almost every day. There are also interpreters for many other languages. If you want to know if an interpreter is available, call the court before you go in.

- **Will I Lose My Job Because I Take Time off to go to Court?**

No. Your employer must let you take time off to get an Order of Protection in court. But your employer does not have to pay you during this time. You should use personal or vacation days if you have them. If your employer threatens to fire you or otherwise punish you for taking time off to go to court, you should speak to an attorney about your rights. For help with this, visit [lawhelpny.org](http://lawhelpny.org).

- **Will I Need to Pay for Anything in Court?**

In Family Court, there are no fees. You will not be asked to pay for your case.

## **How Do I Get an Order of Protection Through Family Court?**

**Note:** If you file for an Order of Protection against the other parent of your child(ren), there's a chance that the other parent will try to get back at you by filing for Visitation or even for Custody. This type of behavior is called **retaliation**. Retaliation is particularly common in cases of Domestic Violence. If you're concerned about this happening, you should consult with a Domestic Violence Advocate or attorney before you file for an Order of Protection. For help with this, go to the Family Justice Center nearest you. For locations and phone numbers of the centers, visit this website: <https://www1.nyc.gov/site/ocdv/programs/family-justice-centers.page>.

1. Starting the process of getting an Order of Protection can take all day in court. Go to the Family Court in the borough in which you live. Don't bring your children if you can arrange care for them, since you may be there a long time. If you have to bring your children with you, there is free child care in the courthouse, but you should get to court early to give yourself enough time to drop off your children. When you arrive, go to the Petition Room in Family Court. Tell the clerk you want an Order of Protection. They will ask you to sign in and wait until they call your name. The clerk will also give you a form to fill out while you're waiting. This form asks you to list information about your case, including how you've been abused.
2. When your name is called, you will meet with a clerk who will type up your request for an Order of Protection. This request is called a petition. Make sure to tell the clerk if the person who abused you has:
  - Physically hurt you or your children
  - Threatened to hurt you, your children, your pet, or anyone you care about
  - Raped you or threatened to rape you
  - Hurt you so that you needed to go to the hospital or the doctor
  - Threatened you with a weapon or with the location of a weapon
  - Thrown things or broken things during an argument
  - Used alcohol or drugs, and if they become violent when using alcohol or drugs
  - A history of mental illness
  - Been convicted of any crimes
  - Been arrested for hurting you or anyone else
  - Has or ever had a Criminal Court Order of Protection against them
  - Violated an Order of Protection in the past
  - Blackmailed or threatened you to get money
  - Stolen your property, or forced you to give up your property regardless of its value
  - Stalked you – meaning if they've followed you from home, work, or in general

- Repeatedly called or texted you after you've asked them to stop
- Repeatedly called, texted, or followed your friends or family
- Strangled or tried to strangle you
- Done anything else to put you or someone you care about in fear of your life or safety
- Has any type of weapon in the home, such as a gun or a knife

On the petition, you will also tell the Court what types of protection you want. **You have to ask specifically for everything you want in your Order of Protection. Ask for as much protection as you think makes sense for your case.** In Family Court, you can ask for the following protections:

That the person who has abused you:

- Must not harm or threaten you or your children.
- Cannot contact you in anyway, including through someone else, and including via social media.
- Must stay away from you and your children, including your home, job, school, child's school, or any other place where you and your children often go.
- Must move out of the apartment or home you live in together (even if your name is not on the lease or deed).
- Must pay temporary child support (to get long-term child support, you must go through a separate child support case).
- Cannot interfere with the care and custody of your children.
- Must give up any guns they have and have their gun license taken away.
- Must return (through the court) your passport, immigration papers, social security card, insurance card, etc.

Additionally, you can ask that:

- Police come with you to your home while you pack up your things if you are moving.
- Your address be kept secret, so the person abusing you won't know where you live.

Make sure you read the petition before the clerk submits it. Once all the information is correct, sign it and give it to the clerk. **Do not let the clerk rush you with the petition.** It's very important that you take as much time as you need to you fill out the petition correctly.

3. When your petition is done, the clerk will send you to a courtroom called the "Intake Part." This is where the Judge will read your petition and ask you questions. You might have to wait a few hours to see the Judge. You may see a person with the title "Referee" or "Judicial Hearing Officer" ("JHO") instead of "Judge." A Referee or JHO can also give you an Order of Protection.

4. When the Judge is ready to see you, the Judge may ask you questions about your petition. Here are a few tips when talking to the Judge:
  - Wait until the Judge tells you to speak. Do not begin to tell your story as soon as you walk into the room.
  - Speak and answer questions as calmly and clearly as you can.
  - Call the Judge, “Judge” or “Your Honor,” and look right at the Judge when you are speaking.
  - Do not interrupt the Judge. If the Judge interrupts you while you are in the middle of a sentence, stop speaking right away.
  - If you don’t know or can’t remember the answer to a question, don’t try to make something up. Just say, “I don’t know,” or “I can’t remember.”
  - If you do not hear or understand a question, don’t answer it. Say, “I’m sorry, can you say that again?” or “I’m sorry, I don’t understand the question.”
  - If you have something really important to say, say “Your Honor may I speak?” Then, say what you have to say clearly and briefly.
  - You do not have to show the Judge any evidence of abuse or bring any witnesses at this first appearance. However, if you have some evidence with you that shows very clearly that the person who abused you is dangerous, you should let the Judge know and offer to show it. That kind of evidence could include a bruise, cut, or other injury on your body (or pictures of the injury), or a text from the abuser to you with a threat to hurt you or your children.
  
5. After you see the Judge, you’ll get a Summons with a return date. This is a document that states when you and the person abusing you must go to court. In most cases, the Court will also give you a Temporary Order of Protection. This will give you temporary protection from the person abusing you until the return date. Before you leave Family Court, make sure the clerk gives you:
  - 2 copies of the petition you filled out
  - 2 copies of the Summons
  - 2 copies of the Temporary Order of Protection, if one was given
  - 1 Affidavit of Service



## How Do I Serve the Papers?

1. The Temporary Order of Protection will take effect when you serve the papers.

Serving the papers means giving the court documents to the person abusing you. You must find someone to serve the papers for you. We'll call this person the Server. This person:

- Can't be you
- Must be at least 18 years old
- Can't be directly involved in the case, such as your child under 21
- Must live in the state where the abusive person is served
- Can be the sheriff of the county in which the abusive person lives

**For serving papers outside New York State:** The requirements for who's allowed to serve papers are different in each state. If you're having papers served to someone outside New York State, make sure the server is legally permitted to serve papers there. You may find out who can serve from an attorney, law office, or court located in that state. You can also check [lawhelp.org](http://lawhelp.org) for more information.

2. Once you've found a Server, give them the following documents:
  - 1 copy of the Order of Protection Petition
  - 1 copy of the Summons
  - 1 copy of the Temporary Order of Protection (if one was given to you)
  - The Affidavit of Service
3. The Server must give everything except the Affidavit of Service to the abusive person. Papers must be served:
  - In person
  - At least 8 days before your return date in court
  - Not on a holiday or on Sunday, or on a different day of religious observance
4. Next, the Server must fill out the Affidavit of Service in front of a Notary Public. A Notary Public is a person licensed by the state government who confirms that you signed a document. You can find their locations online. The Server must then give you the original Affidavit of Service. Make a copy of the signed document for your records, and then give it to the Judge on your return date. If the Sheriff served the abusive person, then they will give the Affidavit of Service directly to the Judge for you.
5. Sometimes the person who abused you will hide from the Server to get out of going to court. **The server must try to serve the papers at least 3 times on different dates, and at different times.** If the Server is not able to serve the papers within 3 attempts, they should

sign an “Affidavit of Attempted Service” in front of a Notary Public. An Affidavit of Attempted Service describes all the times and places where the Server tried to give the papers to the person who abused you.

## **What Happens When I Go Back to Court on the Return Date?**

### **What Should I Bring to Court on the Return Date?**

On your return date, make sure you bring:

- The Affidavit of Service or Affidavit of Attempted Service
- Any evidence you have of the abuse (i.e. pictures of physical injuries, police reports, hospital records, or threatening letters/texts)

Follow the directions on the Summons to find out where you need to go in the Courthouse. Show up early if you can.

What happens next depends on a few factors, including whether or not the person who abused you comes to Court or not.

#### **If the person who abused you does *not* come to Court:**

Give the Judge the Affidavit of Service or of Attempted Service. One of two things can happen:

1. The Judge might decide to continue the appearance and try to make a decision anyway.  
Or,
2. The Judge might make a new date for you and the person who abused you to come to Court. The Judge might also have the police pick up the person who abused you and bring them to Court. This is called issuing a “warrant.” **If the person who abused you is not coming to court but is still threatening or otherwise frightening you, tell the judge what is happening and ask the judge to issue a warrant.**

#### **If the person who abused you does come to Court:**

The Judge may ask you and the person who abused you questions. One of two things can happen next:

1. The person who abused you agrees in front of the Judge to what’s stated in the Temporary Order of Protection. The Judge will then propose a Final Order of Protection. If you both agree to the Final Order of Protection, the case will be over.
2. If either you or the person who abused you don’t agree to the Order of Protection, there will be a “Fact-Finding Hearing.” This is a hearing where the Judge tries to find out the facts of the case. If the court schedules a Fact-Finding Hearing, they’ll give you a new Temporary Order of Protection that will stay in effect until the hearing.

### **How Does a Fact-Finding Hearing Work?**

In a Fact-Finding Hearing, you will go in front of the Judge and explain why you need an Order of Protection. You can show evidence of the abuse, testify, and call witnesses. You should make sure to tell the Judge about any weapon the person who abused you used and any injuries they

gave you. The person who abused you also has a chance to defend themselves. They can give evidence, testify, and call witnesses.

If the Judge thinks that you need an Order of Protection, they'll give you a Final Order of Protection. In many cases, the Judge will make a decision right away. But if the Judge needs more information to make the decision, the Judge will set another date when you will need to return. If this happens, make sure the Judge extends the Temporary Order of Protection until your next court date.

Most of the time, there will be more than one court appearance before the case is resolved.

## **What Happens After the Court Case is Finished?**

If the person who abused you is there in court and agrees to the Order of Protection, the Court will give both of you a copy of the Final Order of Protection. If the person who abused you does not show up, the police will need to deliver the final Order of Protection to them.

## **What Happens if the Person Who Abused Me Violates the Order of Protection?**

If the person who abused you violates the Order of Protection, you can call 911 and say your Order of Protection has been violated. If the Order of Protection has been violated, then the police must arrest the person who violated it. If there is an arrest, the District Attorney will bring a case against them in Criminal Court. See the next page for more details.

If you don't want to call 911, you can also go back to Family Court and file the "Violation of an Order of Protection Petition." In this petition, you state that the Order of Protection has been violated and you can ask the Judge for more protection. If you show the Court that the Order of Protection has been violated, they will give you a new Final Order of Protection.

## **Can I Extend my Order of Protection?**

Yes. But first you need to show the Court why your Order of Protection should be extended. This process is very similar to when you first got the Order of Protection. You just need to show the court why you still need the Order of Protection. You should do this around 1 month before the old Order of Protection ends. You cannot extend the Order after it expires. After the Order expires, you would need to start over with a brand new case and you would have to show that the abuser has committed some new act of violence or threat towards you.

## **What Happens in Criminal Court?**

1. If the police arrest the person who abused you, the case will go to Criminal Court. The Court will give the case to an Assistant District Attorney (A.D.A) who will try to prosecute the person who abused you. Be sure to write down the name and phone number of the A.D.A on your case.
2. Once arrested, the person who abused you will either plead guilty or not guilty to the charges. The Judge will then decide whether to give you a Temporary Order of Protection.
3. If the Judge gives you a Temporary Order of Protection, it will likely be extended every time there is a new court date. The A.D.A. should send you a copy of the new Temporary Order of Protection, but if you don't receive it within a few days after the last court date, contact the A.D.A.'s office.
4. There is not much you need to do in a Criminal Court case. The most important thing is that you tell all of the details of your abuse to the A.D.A. The A.D.A may ask you to testify, but they also may just write up what you say and ask you to sign it. If you are afraid to testify, discuss it with the A.D.A. Also, make sure to keep in contact with the A.D.A to know how the case is going.

## **What Are the Differences Between Family and Criminal Court Orders?**

Family Court and Criminal Court Orders of Protection are very similar. However, there are some differences in what Criminal Courts and Family Courts can do:

- Criminal Courts cannot make decisions about issues like Custody, Visitation, or Child Support. Only a Family Court can do this.
- Criminal Courts can sentence the person who abused you to pay a fine, or to serve time in jail for **abusing you**. Criminal Court can also send them to jail for violating an Order of Protection.
- Family Courts can jail the person **only for violating a court order**. They can't send them to jail for abusing you in the first place. Family Court sends more violent cases to Criminal Court.
- Family Courts can make the person who abused you pay for your attorney. They can also make them pay for any medical or property damage you have because of the abuse.

If you are married to the abuser, neither Family nor Criminal Court can give you a divorce. You can only get divorced in Supreme Court. You can ask for an Order of Protection as part of your divorce case as well. For more information on this, see our Divorce Guide.