

KNOW YOUR RIGHTS

ORDERS OF PROTECTION

1. What is an Order of Protection?

An order of protection is a paper issued by the Family, Supreme, or Criminal courts that is intended to protect you from harm. When an order of protection is issued, the court can:

- Order your spouse or partner to stay away from your home and your workplace;
- Order your spouse or partner to stop harming you and your children;
- Order your spouse or partner to have no contact with you, including through third parties.

Once an Order of Protection is issued, if your spouse or partner violates its provisions, you may notify the police and, upon demonstration that the spouse or partner violated any of the provisions of an order of protection, that person must be arrested.

It is highly recommended to speak with an attorney before filing for an order of protection.

2. How to Get an Order of Protection?

You must go to court to get an order of protection. Two types of courts are available to help survivors of intimate partner/domestic violence: Civil and Criminal. Civil court includes both Family and Supreme Court.

You can seek an order of protection from Family Court if:

- You are legally married to or divorced from the abuser;
- You are related by blood to the abuser;
- You have a child in common with the abuser; and/or,
- You are or have been in an intimate relationship with the abuser (this includes dating, living together, and same-sex relationships).

You do not need an attorney to file in Family Court, and there is no fee to file. As the party filing the petition, you are the “petitioner.” The person against whom you file the order of protection is the “respondent.” The clerk will help you file a petition with the court. You will see a judge on the day you file, who may issue a temporary order of protection in your favor and adjourn the case for you to serve the abuser with

the papers. The police will assist with service of orders of protection if necessary.

You can seek an order of protection from Supreme Court if you are in the process of getting a divorce. You will usually need an attorney to assist you with this process.

A final civil order of protection usually lasts for up to 2 years. If aggravating circumstances exist, such as use of a weapon or a history of orders of protection, an order of protection may be issued by the court for up to 5 years.

If you file for an order of protection in Family or Supreme Court, you can still proceed with a criminal complaint.

To seek an order of protection from the Criminal Court, your abuser must first be charged with a crime by the district attorney.

Unlike Civil orders of protection, there does not need to be any relationship between you and the abuser. In addition, unlike Civil orders of protection, you are not a party to the proceeding but a witness to the incident. The police will notify the District Attorney (DA) and the DA decides if it will prosecute the case. As a result, you have little control over the prosecution or the outcome of the case.

A final criminal order of protection may run from 2-8 years depending on the nature of the crime.

KNOW YOUR RIGHTS

ORDERS OF PROTECTION



MAKING THE CASE FOR HUMANITY

The Legal Aid Society
199 Water Street
New York, NY 10038
Phone: 212-577-3300
Fax: 212-509-8432
www.legal-aid.org



MAKING THE CASE FOR HUMANITY

©2017 The Legal Aid Society All Rights Reserved.