



THE BASICS
Orders of Protection
in New York State

This is one of 11 booklets in *The Basics Series*. The booklets in this series are designed as basic self-help guides for individuals who need access to legal information and the courts in order to address family law and related issues.

All booklets in *The Basics Series*, in English and Spanish, can be downloaded using either of the following two web site links:

- www.lawhelp.org
- www.brooklynbar.org/vlp

Here is current contact information for the two organizations that produced

***The Basics Series* in 2002:**

Brooklyn Bar Association Volunteer Lawyers Project
718-624-3894
www.brooklynbar.org/vlp

inMotion
718-562-8181 (Bronx)
or 212-695-3800
www.inmotiononline.org

January 2006

Sadly, both men and women can, and do, abuse their intimate partners or members of their families.

Intimate partners are people who have a close relationship (usually sexual) with each other. They may be married, living together but not married (domestic partners) or not living together.

In this booklet, we assume that the abuser is a man and the person being abused is a woman.

This booklet will tell you how to get an order of protection. But if you worry about whether it is a good idea for you to try to get an order of protection, there are domestic violence organizations and other organizations you can contact for advice and help. Counselors and lawyers at these organizations can help you plan how to protect your own safety and the safety of your children.

WHAT IS AN ORDER OF PROTECTION?

If someone you are close to (your intimate partner or a family member) is abusing you and/or your child(ren), you can go to Court to ask for legal protection. If you do so, you will be asking a Judge to give you an order of protection.

An order of protection is a Court order that tells your abuser to stop abusing you. It may also tell your abuser to stop abusing your child(ren). The order tells him in detail what he must do and must not do.

An order of protection cannot guarantee your safety. But if your abuser violates (does not obey) the order, here are some of the things that can happen to help keep you safer:

- He can be arrested and put in jail.
- He can be charged with a more serious crime. That means he can go to jail or prison for more time.
- He can have guns in his possession taken away.
- If you have been living together and you have left home, the police will go with you to get your things from where you were living.
- If your abuser stalks you or is harassing you at work, you can call the police to protect you at work.
- You can get another order of protection that lasts for a longer time and/or further restricts his abusive actions.

HOW DO I GET AN ORDER OF PROTECTION?

You can get one in Family Court or Criminal Court. In fact, you can get one from both Family Court and Criminal Court at the same time. And if you are getting divorced from your husband, you can get one as part of your divorce case in Supreme Court.

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

- Your husband or your ex-husband.
- The father of your child(ren), even if you were never married.
- Related to you by blood, marriage or adoption (for example, your father, son, uncle or cousin).

However, if the person abusing you is not any one of these, the law does not consider him to be “family” and you cannot go to Family Court for an order of protection against him. Your only choice is to get an order of protection in Criminal Court.

If you go to Family Court, you do not have to show the Court that your abuser was arrested. If you or someone else calls the police when he has been violent against you and he is arrested on criminal charges, the case will usually go to Criminal Court. But even if he has been arrested and even if you get a Criminal Court order of protection, you can still apply (petition) for an order of protection in Family Court.

If you want information about getting an order of protection in Supreme Court as part of a divorce case, you can find it in the divorce booklet in *The Basics Series*.

WHAT HAPPENS IF I GO TO FAMILY COURT?

You should go to the petition room in Family Court and say that you want an order of protection. They will ask you to sign in and wait until your name is called.

You will be given a form to fill out while you are waiting. This form asks you to list information about your case (for example, the most serious abuse and the most recent abuse you have experienced). The form will help you organize your thoughts and will help the clerk who will type up your petition.

When your name is called, you will meet with a clerk who will type up your petition.

The petition is very important. It is what the Judge looks at before deciding whether to give you the order of protection.

When you ask for an order of protection from Family Court, you will be called the petitioner.

WHAT INFORMATION SHOULD GO INTO MY PETITION?

Since the Judge's decision will be based on the information in your petition, you should give the clerk as many details as you can.

You should tell the clerk if your abuser has:

- Physically abused you (for example, slapped, pushed or choked you).
- Threatened to hurt you, your children, or anyone else you care about, or to kidnap your children.
- Made you have sex with him or anyone else against your will.
- Hurt you so that you needed to go to the hospital or the doctor.
- Threatened to report you for abusing or neglecting your children.
- Threatened you with a weapon (for example, a gun or knife) and, if so, where he keeps it.
- Thrown things around or broken things during an argument.
- Used alcohol or drugs.
- A history of mental illness.
- Been convicted of any crimes or was arrested for hurting you or has a Criminal Court order of protection against him.
- Violated or disobeyed an order of protection in the past.

Usually, it is best to tell the clerk about the first time and the most recent times he abused you, as well as the worst or most serious thing he has done to you.

Sometimes people feel embarrassed to talk about the abuse. Just remember that what happened to you is not your fault – and that you are not alone. Millions of people are abused by their intimate partners or family members every year. There is no reason to feel embarrassed or ashamed when you give this important information to the court clerk or anyone else.

WHAT PROTECTIONS SHOULD I ASK THE JUDGE FOR?

Your petition tells the Judge what protections you need and want. You can ask the Judge to order any of these things:

- Your abuser must not harm or threaten you.
- Your abuser must stay away from you, your home, job, school, child's school, child's daycare and/or any other place where you often go.
- Your abuser must move out of the apartment you and he live in (even if your name is not on the lease).
- Your abuser must pay temporary child support.
- Your abuser cannot interfere with the care and custody of your child(ren).
- Your abuser's gun license is revoked and he must surrender any guns in his possession.
- You can return home with police protection to pack up your things if you decide to move out.
- Your abuser must pay you for expenses caused by his abuse (for example, medical and emergency room bills or car repairs, if he damaged the car).

The main focus of the Family Court is to keep you safe. Getting your abuser to pay for things is not the Family Court's main focus. If this is something important to you, you can ask the Judge how you can bring them up.

SHOULD I READ THE PETITION TO SEE WHAT IT SAYS?

Yes. When the clerk has finished typing the petition, the clerk should give it to you to read. If s/he does not, ask to see it so you can read it. Reading it over will help you figure out if you have left anything out and help you be sure that the clerk understood everything you said.

If you want to add anything or if you notice any mistakes, ask the clerk to make the changes. You will be required to sign your petition and state that the information it includes is correct. Do not let the clerk rush you. **Take whatever time you need to make sure your petition is correct before you sign it.**

WHEN WILL I SEE A JUDGE?

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 about what you have said.

When you arrive at the intake part, be ready to wait. Many other people will also be asking for the Judge to give them orders of protection or some other order that day. Plan to spend the whole day. Bring something to do, like reading. Do not bring your children to court.

WHAT SHOULD I DO WHEN THE JUDGE SEES ME?

After the Judge has read your petition, s/he will probably ask you a few questions. Try not to let this scare you. How you tell your story to the Judge is very important.

Remember that a Judge has many cases to deal with in one day. If the Judge seems rushed or even rude, try not to take this personally. It does not mean that your case is not important. It just means that the Judge wants to get quickly to the information s/he needs to make a decision about your case. The Judge will probably ask direct questions and may interrupt your answers, if you are giving more information than the Judge needs.

Here are a few tips:

- 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.”

Your appearance is also important. Dress as neatly as you can. Wear clothes you would wear to work in an office, if possible. But do not worry if this is not possible. Do not chew gum or bring anything to eat or drink with you inside the courtroom. Do not wear a hat inside the courtroom (unless it is for religious purposes).

WHAT IS A TEMPORARY ORDER OF PROTECTION?

On the day you go to court for an order of protection, if the Judge decides you need one, the Judge will issue a temporary order of protection. You should wait to pick up a copy of your temporary order of protection and other papers from the clerk after the Judge sees you.

This order will last for only a short period of time. It will not start until your abuser is given a copy of the order and will end on the date when you and your abuser must both come back to court.

The return date on a temporary order of protection is the date when you and your abuser must come back (return) to court.

On the return date, if your abuser comes court, this will be his first chance to defend himself in court against what you have said. You must also come back to court on the return date. If you do not, your temporary order will no longer be any good.

CAN I GET A TEMPORARY ORDER OF PROTECTION AT NIGHT OR ON THE WEEKEND?

The Family Courts in Brooklyn and the Bronx have evening hours: Tuesday and Thursday from 5 p.m –8 p.m. If your borough does not have evening hours, then you can go to Criminal Court to get a temporary order of protection when the Family Court is not in session. The Criminal Court is never closed. The order you get will be a Family Court order, because the Criminal Court is acting in place of the Family Court when it is not open.

And remember, if you feel you are in danger, you can always call the police.

HOW WILL MY ABUSER KNOW ABOUT THE TEMPORARY ORDER?

It is your job to make sure that your abuser knows that you have gone to court to get an order of protection against him. You do this by having someone else deliver a copy of the Family Court papers to him. The Court will give you copies of the papers you must have served on your abuser.

When your abuser is given papers from the Court, that is called serving him with the papers.

By law, he does not have to obey the order until he is served with the papers.

WHAT IS THE RIGHT WAY TO HAVE THE PAPERS SERVED?

The person who serves the papers must give them to your abuser in person. The papers cannot be mailed to him or left at his door or with someone else he lives or works with.

You cannot be the one who serves your abuser. But you can choose the person who will serve it, as long as that person is over the age of 18. This person can be a friend or relative, or s/he can be a process server you pay to do this.

If you are afraid that your abuser could become violent when he is served, you can choose to have the police serve the papers. Take the papers to the police precinct where your abuser lives or works and ask to have a police officer serve your abuser.

Your abuser may try not to be served. If you are counting on the police to serve him, you need to follow up with the precinct. If they are having trouble finding him, keep notes, writing down each time they tried to serve the order, and what happened.

WHAT PAPERS MUST BE SERVED ON MY ABUSER?

He must get copies of:

- Your petition.
- The temporary order of protection.
- A summons to appear.

When he gets these papers, your abuser will then know what the Judge ordered him to do and not to do. And the summons to appear gives him the date he needs to come to court to answer (respond to) what you have said about him.

In Family Court, your abuser will be called the respondent, because he gets to respond to the charges you have made against him.

HOW DO I PROVE THAT MY ABUSER WAS SERVED?

Once your abuser has been served with a copy of the papers, any person who serves him, if that person is not a police officer, must fill out an affidavit of service and give it to you.

An affidavit of service is a sworn statement (signed in front of a notary public) by the person who served your abuser that says when, where and how this person delivered the papers to the respondent.

If the person who serves your abuser is a police officer, the officer should give you a statement of personal service instead of an affidavit of service. This needs to be signed by the officer, but not in front of a notary public. So

when you get this statement from the officer, be sure to check to see that it has been signed.

When you come back to court on your return date, you must give the Court either an affidavit of service or a statement of personal service. If you do not bring one of these, your case may be dismissed.

WHAT HAPPENS WHEN I GO BACK TO COURT ON THE RETURN DATE?

This is the time when the Judge will decide whether to give you a permanent order of protection. Be sure to show up.

If something comes up and you need to change the date of your hearing, call the Court clerk immediately and tell the clerk why. You will need to ask for another date.

If you ask to change the return date, you will be asking for a continuance or an adjournment.

On your return date, it is a good idea for you to show up early. Even if your abuser has not been served, you need to go back to court on the date the Judge set.

If your court papers were never served on your abuser, you will have a chance to explain why. If there is a good reason, the Judge may give you more time to serve him. If you can, you should give the Judge an affidavit or statement of attempted service.

An affidavit of attempted service is a sworn statement (signed in front of a notary public) that describes all the times and places where the person tried but could not deliver the papers to the respondent.

WHAT SHALL I BRING TO COURT ON THE RETURN DATE?

Be sure to bring these things and/or people with you:

- An affidavit of service, a statement of personal service or affidavit of attempted service.
- Any physical evidence you have of the abuse (for example, photographs of physical injuries, police reports, hospital records or threatening letters).
- Any adult(s) who witnessed your abuse and who is willing to tell the Judge what s/he saw or heard.

Be sure to make a photocopy of every paper you bring to court. Keep these copies for your own records.

HOW DO I KNOW WHERE TO GO?

When you get to court, tell the clerk or a court officer the name of the Judge you are there to see. If you do not know the name of the Judge, but you know the part, a clerk or court officer can tell you where the part is. Also, in most court houses on the first floor, court calendars for the day will be posted. You can find your name and courtroom information on the posted court calendars.

The part is another name for courtroom.

The clerk or a court officer can tell you how to get to that Judge's courtroom. You will see a court officer standing in front of the room. Let the court officer know that you are there for your case and do what the court officer says.

Most likely, you will have to wait. If you are worried about being in the waiting area with your abuser, go to the Safe Horizon waiting room in the

court. Safe Horizon is a social service organization. They have domestic violence counselors on staff and a safe waiting room in every Family Court building in New York City. They will not let your abuser into this room.

WHAT IF MY ABUSER DOES NOT SHOW UP?

An arrest order from a Judge is called a warrant.

If this happens, don't worry. It doesn't mean that your case will be dismissed (ended). Sometimes, the Judge will hold a quick hearing without him. The Judge might make a decision without your abuser there. Or the Judge might order you and your abuser to come back on a new date. The Judge might also order your abuser to be arrested to make sure he will attend on the new date.

WHAT IF MY ABUSER DOES SHOW UP?

In Family Court, a trial is called a fact-finding hearing.

- **You both may agree (consent) to the order of protection.** If your abuser agrees in front of the Judge to what is stated in the temporary order, then you won't need a fact-finding hearing. Many people who have temporary orders filed against them will agree to them so they don't have to have a fact-finding hearing. They are afraid of what else might be said against them at this hearing.

If you both agree to a final order of protection, the Judge will not make a decision that your abuser has done anything wrong, but you will get a final order of protection from the Judge.

- **You or your abuser may ask for a fact-finding hearing.** If your abuser says the charges you made against him aren't true, the Judge will hold a hearing to find out who is telling the truth.

WHAT IF I CHANGE MY MIND AND DO NOT WANT AN ORDER OF PROTECTION?

If you do not want to go forward right away but think that there may come a time again when you'll need an order of protection against your abuser, you can go to court or send a letter to the Court asking to have your petition withdrawn "without prejudice."

If your petition is withdrawn without prejudice, that means you can file a new petition at a later date giving the Court the same information about your abuser that you included in your petition this time.

You can always go back to court to file a new petition for an order of protection if there are new incidents of abuse since you withdrew a past petition.

DO I NEED A LAWYER?

The Family Court does not require you to have a lawyer. But you have a right to have a lawyer representing you in your order of protection case. This is true whether your case is proceeding in Family Court or in Supreme Court. You can ask the Judge to appoint a lawyer for you for free, if you cannot afford to pay for one. If the Judge decides you do not qualify for a free lawyer, you can try to find one by calling a bar association or legal services agency in your borough.

WHAT HAPPENS 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 (for example, photographs, police reports or medical records) and you can testify and call witnesses. You should make sure to tell the Judge about any weapon your abuser used and any injuries he gave you. Your abuser has a chance to defend himself. He can give evidence, testify and call witnesses, too. The Judge will then make a decision without a jury.

If the Judge decides that what you have said is true, the Judge will give you a final order of protection. In many cases, the Judge will make a decision right away.

However, you and your abuser may need to come back to court more than once, because the fact-finding hearing could take more time than the Court scheduled on the return date. If your case is difficult and/or if the Judge needs more information from you or your abuser to make a decision, the Judge will set another date when you will need to return.

Do not worry about your temporary order of protection ending. As long as the Judge has not finished the fact-finding hearing, the Judge should extend your temporary order of protection until your next court date. It is important to get a copy of your temporary order of protection every single time it gets extended.

Remember that how you act in court is important. If going back to court a number of times is hard for you for whatever reason, think of each day your case is in court as another step closer to getting what you want. Try to maintain a positive attitude.

WHAT HAPPENS AFTER THE HEARING IS OVER?

If your abuser is there in court, the Court will give both you and him a copy of the final order of protection. If your abuser does not show up, the police will need to deliver the final order of protection to him.

The police are supposed to deliver the order of protection to your abuser within 24 hours. You can choose whether to have the Court send

the order to the abuser's local police precinct or to bring it there yourself. It is probably best to bring the order yourself. You will want to go to the precinct anyway to check to make sure that they received the final order of protection from the Court to serve on your abuser.

WHAT HAPPENS IF MY ABUSER IS ARRESTED?

A Criminal Court case against your abuser begins when you or someone else makes a call to the police. When the police arrive, tell the officers what happened. Give the officers simple and direct answers. The police will write a truthful report about the incident.

Be sure to get a copy of your police report.

The police report is called a Domestic Incident Report, or DIR.

Your abuser may or may not be arrested. If he is arrested, the case will be handled in the Criminal Court.

WHAT HAPPENS IN CRIMINAL COURT?

If the police arrest your abuser, the case will be assigned to an Assistant District Attorney (sometimes called an A.D.A.) who will present the evidence against your abuser in Criminal Court. You are the complaining witness in the case. Your abuser is the defendant in the case.

Be sure to get and remember the name and phone number of the A.D.A. assigned to your case.

Your abuser should be arraigned within 24 hours of arrest.

An arraignment is the first criminal court appearance after a defendant is arrested.

Several things happen at the arraignment. The defendant pleads guilty or not guilty to the criminal charges. The Judge decides whether to issue a temporary order of protection against the abuser for you until the next court date. The temporary order of protection can be replaced by a permanent order of protection when the case ends.

WHAT DO I DO IF THERE IS A CRIMINAL CASE?

Keep in touch with the A.D.A so that you will know what is happening with your case. The A.D.A. in charge of your case will want you to testify against your abuser in court. Without your testimony, the A.D.A. may have trouble proving the criminal charges against your abuser.

You are the most important witness for the criminal case. You may or may not want to testify. You do not have to testify. You should talk this over with the A.D.A., who will want to know whether you will help prosecute your abuser.

If you are afraid to testify, the A.D.A should offer you protective services.

WHAT ARE THE DIFFERENCES BETWEEN FAMILY COURT AND CRIMINAL COURT ORDERS?

An order of protection will list things your abuser cannot do and/or must do. These things are called the relief the Judge has granted.

Because all orders of protection are meant to protect you from your abuser's dangerous actions, most of them are similar. They tell your abuser to stop abusive actions toward you and possibly your children. Often they tell your abuser to stay away from you and your children.

However, by law there are some differences in what Criminal Court Judges and Family Court Judges can order.

- A Criminal Court Judge cannot decide issues concerning children, such as custody, visitation and child support. Only a Family Court Judge can do this.
- A Criminal Court Judge can issue an order of protection that lasts from 1 to 5 years. A Family Court Judge can issue an order of protection that lasts up to 5 years.
- A Criminal Court Judge can sentence your abuser to a fine, restitution or a jail term for abusing you. A Criminal Court Judge can also send your abuser to jail for violating a court order.

Restitution means your abuser must pay you back for expenses he caused, like medical bills or property damage.

- A Family Court Judge can jail your abuser only for violating a court order. Family Court Judges can refer serious cases to Criminal Court for prosecution.

WHAT WILL HAPPEN TO MY CHILD WHILE I AM AT COURT?

If you have a choice, it is much better to leave your child with a family member or friend while you are at court. Being at court will be hard on both you and your child. Taking care of your child's needs can distract you from what you need to do. It can also make your worry and stress levels even higher. Also, Judges will usually not allow you to bring your child with you into the courtroom.

Family Courts in New York City have children's centers in them. But these centers are small and have limited hours. If you need to bring your child with you, be sure to get to court as early as possible. Then you have a better chance of getting your child into the children's center. Criminal Courts do not have children's centers. If you can't get someone to watch your child while you are in court, contact Safe Horizon to see if they can help you.

WHAT IF I NEED AN INTERPRETER IN COURT?

The Courts are supposed to give you an interpreter, if you need one. **If you can't speak English very well and you feel you need an interpreter, you should tell the clerk or court officer right away.**

In most cases, Spanish language interpreters are available every day in the courthouse. There are also interpreters of many other languages. If you would like to know if an interpreter will be available for you, call the court before you go in, to be sure.

If you are deaf or hard of hearing and need American Sign Language interpretation, call the court in advance. If you have a TTY, the number for New York Relay Service is 1-800-662-1220. Be sure to have the telephone number of the court you will be going to with you. If you do not have a TTY, ask a friend to call for you.

If it is an emergency, however, just show up at the court and an interpreter will be located for you. You will probably need to wait a while, but try to be patient.

WILL I LOSE MY JOB BECAUSE I TAKE TIME OFF TO GO TO COURT?

No. The law says your employer has to let you, and the people who may be your witnesses in court, take time off from work for court appearances, if the case involves domestic violence. You must give your employer at least a day's notice. But try to give your employer as much advance notice as you can.

Your employer does not have to pay you for the time you take off. You can use personal or vacation days that you have saved up, if any.

WHAT IF MY ABUSER VIOLATES THE ORDER OF PROTECTION?

If your abuser violates the order of protection, that means he disobeys something the Judge orders him to do in the order of protection.

You can call the police immediately and have him arrested. If you have him arrested, he will have to go to Criminal Court.

If your order is from the Family Court, you can go back there and file another petition, even if you have not had him arrested. This new petition will be called a violation on an order of protection. In the new petition, you can ask the Judge for more (increased) protection for yourself and your family. If the court decides that your abuser violated your order of protection, you could get a new final order of protection for up to five years.

WHAT ELSE CAN I DO TO BE SAFE?

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 really a checklist to help you take the steps you need to protect yourself and your family. You are the one who knows your abuser best. And you are the best person to decide whether and when it is safe for you to take action to make a change.

It is always helpful to talk this through with a domestic violence counselor or some other person you trust. You can share your thoughts and get the other person's ideas about ways to stay safe.

Two organizations in New York State that can give you information about safety planning and the names and contact information for agencies near you that can help. They are:

New York State Office for
the Prevention of Domestic Violence
80 Wolf Road
Albany, NY 12205
www.opdv.state.ny.us

New York State Coalition
Against Domestic Violence
Women's Building, 79 Central Ave.
Albany, NY 12206
(518) 432-4864
www.nyscadv.org
(800) 942-6906 English
(800) 942-6908 Spanish

Once you have an order of protection, temporary or final, there are some other steps you can take to stay safe. **Here are some general safety tips.**

- Always keep a copy of your order of protection with you and file another copy of it with your police precinct.
- If you and your abuser used to live together and you have stayed in your home, change the locks. If you don't have money to change your locks, contact Safe Horizon for Project Safe, a program that changes locks for people who are afraid. Call 212-406-3010 from 9 a.m. - 5 p.m. Monday to Friday.
- Pack a bag with clothing, money and important papers and other things you will need if you had to leave home in a hurry. Keep it ready in a safe place.

- If you can, put in a security system where you live. Also be sure that you have smoke detectors and fire extinguishers that work in all parts of your apartment or house. Make sure that the outside of your home (for example, the yard or hallway) is well-lit.
- Let your neighbors know that your abuser does not live with you anymore. Ask them to call the police if they see him near or in your home, or with your child(ren).
- Keep emergency contact phone numbers with you at all times (for example, 911, your police precinct and your lawyer).
- Carry a cell phone, if you can. The police department and Safe Horizon will give people who have an order of protection a free cell phone that calls 911 in an emergency.
- If the order of protection covers your child(ren), tell anyone who takes care of your child(ren) that your abuser is supposed to stay away from your child(ren). That includes your child(ren)'s school. Give them a copy of the order of protection. Tell them that they should call the police if your abuser tries to take your child(ren) from day care or school.
- Stay away from places you used to go with the abuser. That way, you can avoid seeing him.

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