

**Family Legal Care**

**Orders of Protection**

**Large Print Edition**

## **Orders of Protection**

*This document should not take the place of a consultation with a lawyer. Family Legal Care encourages all individuals involved with the Criminal and Family Court systems to consult with a lawyer.*

This guide answers questions that someone may have if an order of protection has been filed against the person in Criminal Court or Family Court. The information is helpful for both people who have an order of protection against them, and people who are protected by the order. It is very important for everyone to understand what it means and what will happen if you do not follow all of the rules.

### **What is an order of protection?**

An **order of protection (OP)** is a paper from a judge that makes rules about contact between people.

## **How does someone get an order of protection in Family Court?**

To get an order of protection in Family Court, the person who wants the order of protection starts a case by filing a **family offense petition**. A **petition** is a written request. The person filing the petition is called the **petitioner**. A family offense petition asks a judge to grant an order of protection. The person the case is against is called the **respondent**. The petition tells the judge and the respondent what the respondent did and what the petitioner wants.

## **Who can get an order of protection in Family Court?**

Family Court hears cases involving children and families. To get an order of protection in Family Court, the petitioner's relationship to the respondent must fall into one of these four categories:

- Current or former spouse (husband or wife) through a legal marriage
- Someone you are related to through blood or marriage
- Someone you have a child with (even if you were never married to or never lived with the person)
- Someone with whom you are or had been in an “intimate relationship”

## **How does someone get an order of protection in Criminal Court?**

To get an order of protection in Criminal Court, there needs to be a criminal case. Criminal cases usually start after an arrest is made. The person who is arrested is called a **defendant**. As part of the case, the prosecutor can ask the judge to give an order of protection against the defendant to the **complaining witness**. The complaining witness is the person who a crime may have been committed against. The person is also

sometimes called the crime victim. The prosecutor takes the government's side against the defendant. The prosecutor is called an **Assistant District Attorney (ADA)**.

## **Who can get an order of protection in Criminal Court?**

Criminal Court does not have the same limits as Family Court. There does not need to be any special relationship between the complaining witness and the defendant for there to be an order of protection in Criminal Court. Someone who does not have a relationship with the defendant, such as their neighbor or someone they are dating but do not have a child with, can only get an order of protection in Criminal Court.

## **Can there be orders of protection against me from both Criminal Court and Family**

## **Court?**

Yes. Sometimes people get orders of protection from Family Court and Criminal Court.

**Please note that for the remainder of this guide both respondents and defendants will be called defendants.**

## **Are all orders of protection the same?**

No. Orders of protection may contain many different rules.

- **A full or “stay away” order of protection:** This says you must stay away from the person holding the order. You must stay away from their home, their job, and any other place the court says. It may also say you have to stay away from the children of the person.
- **A full order of protection excluding you from the home:** This means that

you have to move out of the home and stay away from the person holding the order. You have to move out, even if your name is on the lease.

- **A limited or “refrain from” order of protection:** This means that you must stop abusing, harassing, or threatening the person holding the order or any children who may be included on the order.

There might be other rules. You should ask your lawyer to explain all of the rules when an order of protection is filed against you.

## **When do orders of protection start?**

Sometimes in Family Court, the petition will receive a **temporary order of protection (TOP)** the same day that the petition is filed. The temporary order of protection is not active until it is served on the defendant. For more information on service, please see the Family Legal Care guide “**Serving Court Papers.**”

A Criminal Court temporary order of protection starts immediately, right when the judge orders it.

## **How long do temporary orders of protection last?**

A temporary order of protection can last until your next court date. Sometimes the judge picks the date that it will end. The date is on the order.

## **How long do final orders of protection last?**

A final order of protection does not last forever. Criminal Court orders and Family Court orders last for different amounts of time. Final orders of protection are sometimes called permanent orders of protection, even though they do not last forever.



## **How long do final orders of protection last from Criminal Court?**

In Criminal Court, a final order of protection usually lasts for two years. If you are charged with some kinds of **felonies**, an order can last for eight years. A felony is a crime that is punishable by a year or more in prison. If you are charged with some kinds of **misdemeanors**, an order can last for five years. A misdemeanor is a crime that is punishable by less than one year in jail.

## **How long do final orders of protection last from Family Court?**

In Family Court, a final order usually lasts for two years. Sometimes the order is for as long as five years.

**If you are not sure if an order of protection is still in effect, you should check with your lawyer BEFORE trying to see the person holding the order.**

**In Family Court, you can also check in the record room.**

**Do I get a free lawyer for both a Family and Criminal Court Case?**

Yes. If you cannot afford to hire a lawyer, the court will give you a free lawyer for the Family Court case and the Criminal Court case.

Usually you are given two different lawyers – one for Family Court and one for Criminal Court. You are also entitled to a free lawyer in the Supreme Court if your spouse is requesting an order of protection as part of a divorce.

**What is the Integrated Domestic Violence Court?**

When there is a Criminal Court case and a Family Court case involving the same family, both cases are transferred to the **Integrated Domestic Violence (IDV) Court**. This way,

one judge hears both cases and the family does not have to go to court as many times.

## **Can I get an order of protection against someone who has an order of protection against me?**

Yes. If the order of protection is from Family Court, you can file a cross-petition for an order of protection. you must give the court a good reason why you need protection. Telling the court that you need one because someone has one against you is not enough. If both people have orders of protection, both people can be arrested if there is a violation.

## **What can happen if I do not follow the rules in an order of protection?**

You must obey court orders. If you **violate** an order of protection, you can be arrested.

Violate means to not follow the rules. If you are arrested for violating an order of

protection, there can be a new Criminal Court case against you. If you violate a Family Court order of protection, the person who is protected by the order of protection might also file a violation petition against you in Family Court.

What happens next if you are arrested can depend on the outcome of your original case. If the original order of protection that you violated was from Criminal Court and:

- You had a **conditional discharge**, you can go to jail. Conditional discharge means you are not found guilty and you go free but you have to follow certain rules.
- You were on **probation**, you can go to jail. Probation means the court finds you guilty of a crime but the judge lets you go free as long as you do not do anything else wrong and meet with your Probation Officer.
- You were given an **Adjournment in Contemplation of a Dismissal (ACD)**,

the judge can take it away. An ACD is what a judge sometimes gives a defendant instead of a trial. It means the case will not go to trial if the defendant does not break the law again for a certain period of time.

- You were released on **bail**, the judge can send you to jail. Bail is money a defendant gives to the court to get out of jail.

For some violations you can be sentenced to up to one year in jail. You can also be charged with a felony. This could lead to a sentence of up to seven years in prison and three years of probation.

## **Can I get things out of my house if the order of protection forbids me from going there?**

You can only do this if the order of protection specifically says you can. You may be allowed to pick up things like medicine and important papers, but first you have to get permission

from the judge who gave the order of protection. The judge will write a rule on the order of protection saying when you can get the stuff, and what stuff you can get. If you have a lawyer, make sure your lawyer knows what you need. You usually will have to go with the police and the judge will pick a day and time for you to go. The judge may also say the things should be taken to a place away from the house where you can pick them up.

## **Can I send someone else to get things out of the house?**

No. Sending another person to pick things up is a violation of the order, even if the protected person is not home, or will not care if the person is in the home. You can get arrested for doing this.

## **Do I have to pay rent if my name is on the lease and I have been ordered to leave the home by an order of protection?**

Yes. You have to pay even if you are in jail. You have to pay even if the order of protection says you cannot stay in the home.

## **Can I see my child if there is a Criminal Court order of protection against me?**

Maybe. You can ask a Family Court judge in the county where your child lives for permission to see your child. This is called asking for **visitation**. Visitation can only be granted by a Family Court judge. Even if there is an order for visitation from Family Court, you may need an exception to the Criminal Court order allowing the visit to happen. If the exception is granted, then you can visit your child.

**You must ask your Criminal Court attorney to ask the judge for the exception to be made.**

**Can I see my child if there is a Family Court order of protection against me?**

A Family Court judge will determine what is in the best interests of your child when deciding whether or not to allow visitation. The same Family Court judge who makes the order for visitation can give the exception to the Family Court order of protection for the visits to happen. For more information, please see the Family Legal Care guide "**Custody & Visitation Basics.**"

**Does an order of protection still stand if we make up and start living together?**

Yes. The order of protection still works, even if you and the person holding the order are living together. As long as an order of



protection is in effect, the person holding the order can call the police at any time. The person who has the order can ask the ADA or the judge in Family Court to take away the order.

### **If the order of protection is from Criminal Court, can the person holding it have it removed?**

No. In criminal court, only a prosecutor can do that. All the person can do is ask the prosecutor to drop the charges. Even if the person wants to drop the charges, the prosecutor can still go forward with the case.

### **Can the petitioner remove an order of protection from Family Court?**

The person who filed (asked for) the order can ask a Family Court judge to remove it. The judge will usually decide the same day. If the

judge decides not to remove the order, it remains in effect. The person holding the order can still call the police at any time.

## **Can the police arrest me without a copy of the order of protection?**

Yes. The police can look up whether there is a temporary or final order of protection. All the orders of protection in New York State are listed in a computer Registry of Orders of Protection and Warrants. The information in this registry will include:

- Who is on the order of protection;
- The dates it is in effect;
- If the defendant/respondent was told about it;
- The rules the judge made on it; and
- If it is temporary or final.

Even though police can look it up, it can be helpful for both parties to have a copy of the order with them at all times to prove whether the rules were broken.

## **Can I be arrested if the person holding the order contacts me?**

Yes. No matter who starts the contact, the police will enforce the order as it is written. If the protected person calls you, and you are not allowed to speak, you can hang up and call your attorney to tell the attorney what happened.

## **Can I be arrested for violating a New York State order of protection in another state?**

Yes. The registry can send the information about the order of protection to the National Crime Information Center (NCIC) "hot file" registry so every state knows about it.

Only orders of protection related to domestic violence cases are sent to the registry.

## **Can orders of protection from other states be enforced in New York State?**

Yes. The order can be filed for free with the Court Clerk. The Court Clerk will put the information in the computer registry.