

INFORMATION FOR THOSE SEEKING A FAMILY COURT ORDER OF PROTECTION

CAN I FILE A PETITION FOR AN ORDER OF PROTECTION IN FAMILY COURT?

Yes, you can file a petition in Family Court for an order of protection if:

- > You are related to the other person by blood or marriage; or
- > You are or were legally married to the other person; or
- > You have a child with the other person; or
- > You have or have had an intimate relationship with the other person, such as a dating or other relationship. You may be in an intimate relationship whether or not you ever lived together or even had a sexual relationship.

CAN I FILE A PETITION FOR AN ORDER OF PROTECTION IN CRIMINAL COURT?

Yes. Both Family Court and Criminal Court can issue orders of protection. You can file in Criminal Court even if you are not related to the other person, do not have a child together or are not in an intimate relationship. Unlike Family Court, the Criminal Court is open at night and on weekends. To get a Criminal Court order of protection, you must file a police report.

If you have a child with the other person, or are related to or in an intimate relationship with the other person and Family Court is closed, you may file for a temporary Family Court order of protection in Criminal Court. Your case will be transferred to Family Court on the next date that the Family Court is open.

HOW DO I FILE A PETITION IN FAMILY COURT?

Go to the Petition Room located in the Family Court. Tell the petition clerk you want to file for an order of protection. The clerk will give you forms to fill out. These forms ask questions about you (Petitioner), the other person (Respondent) and why you need the order of protection. Give the forms back to the petition clerk after you fill them out. They will call your name when they are ready to type your petition. This is called a family offense petition.

HOW MUCH DOES IT COST TO FILE A PETITION?

It is free to file a petition.

WHEN CAN I FILE MY PETITION IN THE FAMILY COURT?

The New York City Family Court is open Monday through Friday from 8:30 AM until 4:30 PM to file petitions. However, you should get to the Family Court early in the morning to see the judge or referee on the same day.

WHAT SHOULD I SAY IN MY PETITION?

Write down as many details as possible. It is best to include the most recent incident, the first incident and the worst incident. Include the time, date and place of each incident. You should also state if you were injured, (bruises, cuts or other injuries), and if the other person used or threatened to use a weapon. Many actions are family offenses, such as when a person verbally, physically, emotionally, or sexually abuses you, or threatens to hurt you, or stalks you, or harasses you. If there were threats or verbal abuse, tell the clerk the exact words the respondent used. Before you sign the petition, read it carefully, make sure the petition is accurate.

WHAT CAN I ASK THE COURT TO DO?

- > The court can order the respondent to stay away from you, your home, job, your children, your children's school or any other place or person the court finds necessary.
- > The court can order the respondent not to contact you by phone, text, e-mail or through/via a third party.
- > The court can order the respondent to stop abusing or threatening to abuse you or your children.

- > If you do not want to return home, the court can allow you to enter your home with the police to collect your personal belongings at a certain date and time.
- > If you want the respondent out of the home, you can ask the court to exclude him/her.
- > The court can order temporary child support based on the needs of the child. You will still have to file a separate petition for child support.
- > The court can revoke or suspend respondent's license to carry firearms or order him/her to turn in any or all firearms owned or possessed by respondent.
- > The court can order respondent to pay any medical expenses you may have due to respondent's behavior.
- > The court can order the respondent to pay damages ("restitution") up to \$10,000 for your property (e.g. car, windows, furniture) damaged by the respondent. You will have to prove the value of what was damaged.
- > The court can put the respondent on probation for up to a year. The court may include referrals to alcohol and drug counseling as a condition of probation. > The court can order the respondent not to hurt or kill your pet.

CAN I ALSO ASK FOR CUSTODY OF, OR VISITATION WITH, MY CHILDREN?

Yes. You can ask for the respondent not to interfere with your custody or visitation of the children. However, you should file a separate petition for custody or visitation. The petition clerk will file both petitions for you at the same time.

IS THERE ANYONE ELSE IN THE COURT, BESIDES THE CLERK, WHO CAN HELP ME WITH THE PETITION?

Yes. Safe Horizon is an agency that assists victims of domestic violence. They have an office in each family court. They have staff available to assist you. They can also help you if you need to get into a shelter or have other serious and dangerous domestic violence issues.

WHAT HAPPENS AFTER MY PETITION IS TYPED?

You will be sent to see the judge or referee. The judge or referee will read the petition, ask you questions and decide whether to give you a temporary order of protection.

WHAT DO I SAY TO THE JUDGE OR REFEREE?

Answer any question the judge or referee may ask you. Be sure to tell the judge or referee if you want the respondent removed from your home. The court may give you a temporary order of protection, a summons and a date to come back to court. The summons is a paper that orders the respondent to appear in court. Even if the judge or referee does not issue the temporary order of protection, the court will issue a summons directing the respondent to come to court. The judge or referee will ask you how you want the papers to be served on (given to) the respondent. Before you go to court, you may find it helpful to write a list of the things you want to tell the judge or referee so that you do not forget when you are in the courtroom.

HOW ARE THE PAPERS SERVED?

You (the petitioner) may never serve (give) the papers yourself. The police, sheriff, a friend or relative 18 years of age or older can serve the papers. You can also hire a process server. The respondent must be personally served (given or handed) the summons, petition and temporary order of protection. The respondent may refuse papers or walk away. As long as the papers are left on the ground next to respondent and s/he was told they are court papers it may be considered good service. The papers for an order of protection must be served at least 24 hours before the court date. They may be served any day of the week at any time of the day or night. A temporary order of protection does not go into effect until it is served.

There are different ways to have respondent served, they are:

- > Petitioner (you) can arrange service of papers. Any person over eighteen years old, except you, may serve these papers. The papers can be served by any person, a relative, friend, or process server as long as they are not a party to the case. This person must complete an "Affidavit of Service" and have it notarized. You must bring this with you when you return to court or the case could be delayed or dismissed.
- > Petitioner (you) can arrange with police to assist. You may inform the court that you want to arrange to have respondent served with papers but request NYPD to assist. NYPD will assist you in serving the papers if you bring the papers to the precinct where the respondent lives or works. The police may ask you to go with them when they serve the papers on the respondent. Sometimes, the police will let you give them a picture of the respondent instead of asking you to go with them. The police will give you a "Statement of Personal Service" if they serve the respondent. All precincts in NYC have a domestic violence officer to assist you.

- > Service by Sheriff's Office. The NYC Sheriff's office specializes in serving court papers. They will serve family court petitions for orders of protection for free. They will also provide you with a signed statement if they serve respondent or a signed statement of their attempts to serve respondent.
- > NYPD service: The Court can send the papers directly to the NYC Police Department to serve the papers. The respondent's current address and apartment number must be on the petition for the police to serve the papers. The police should make multiple attempts to deliver the papers. If the police have been unable to deliver the petition after several attempts, they must give you or send the court a statement showing the dates and times of the attempts. If they serve the papers they should give you a signed statement that service was accomplished.

WHAT HAPPENS AFTER I SEE THE JUDGE OR REFEREE?

You must wait to pick up your papers. You will receive a copy of the petition, possibly a temporary order of protection and a summons to serve the respondent. You will also get a paper telling you when to come back to court. The judge or referee, court officer or clerk will tell you where to wait. Make sure you wait to pick up your papers. If you have questions, speak to the supervisor in the petition room.

WHAT IF I CANNOT SERVE THE RESPONDENT?

You should come back to court on the date you were told to return even if you have not been able to serve the respondent. You can ask the judge or referee for more time or a different way to serve the papers. If the police attempted service, bring the statement of attempted service signed by the police. If someone other than police attempted to serve respondent, bring the Affidavit of Attempted Service signed by the person who attempted service — this must be notarized.

WHAT HAPPENS IF I CANNOT COME BACK TO COURT ON THE NEXT DATE?

It is very important for you to come to court on the date you were told to return. If you (10 not appear, your case may be dismissed and you may no longer have a temporary order of protection. In case of an emergency, send someone in your place to explain your absence or notify the court by phone or in writing. Be sure to include the Docket Number, Part, Date and Time of your court date if you phone or write the court to seek and adjournment. The judge or referee will then decide to adjourn your case or dismiss it. There is no guarantee that the judge or referee will accept your reasons for not coming to court.

WHAT HAPPENS WHEN I COME BACK TO COURT ON THE NEXT COURT DATE?

If the respondent comes to court, one of two things can happen:

- The respondent can agree or "consent" to a Final Order of Protection without admitting doing anything wrong. An order "on consent" has the same effect and will protect you the same as an order of protection after a trial.

- If the respondent does not agree to the order of protection on the terms you asked for your case will go to trial. A trial may take several court dates before it is resolved. Both you and the Respondent will have an opportunity to tell the Court your story and present evidence in support of your case.

If the respondent does not come to court:

- You will be asked to show the judge or referee that the respondent was properly served. You will need to give the judge or referee an affidavit of service from a relative, friend, or process server, or a statement of service from the police. If the court finds the respondent was properly served, the court may adjourn for additional notification to Respondent or to allow you to return with witnesses (if any) or will conduct a hearing where the judge will ask you some questions about the incidents that you put in the petition. Speak clearly and organize your thoughts. Don't forget to tell the Court if a weapon or other dangerous instrument was used or if you were injured. If the Court finds that a family offense has occurred, the Court will issue a final order of protection. The court will send the order to the respondent but you may want to have the police serve the final order as well. It is important that the respondent knows a Final Order of Protection was issued, and what the Order said.

AM I ENTITLED TO AN ATTORNEY?

Yes, both you and the other person have a right to an attorney. You may hire an attorney of your own choice or you may ask the court to appoint one for you if you are unable to afford one. Only the Court can decide if you qualify financially for an attorney.

WHAT'S THE DIFFERENCE BETWEEN A TEMPORARY ORDER OF PROTECTION AND A FINAL ORDER OF PROTECTION?

A temporary order of protection may be issued on the day you file. It only lasts until your next court date. The court may extend the temporary order at each court date until the case is over. A final order of protection is issued after the case is over and the judge or referee finds that a family offense was committed or the respondent consents. A final order lasts up to two or five years.

HOW LONG DOES AN ORDER OF PROTECTION LAST?

Most family court orders of protection are for up to two years. You can get a five year order of protection if there are "aggravating circumstances." Aggravating circumstances exist where there is physical injury, the respondent used a weapon or other dangerous instrument against you, there is a history of repeated violations of prior orders of protection, the respondent has been convicted of crimes committed against you in the past, there is exposure of any family or household member to physical injury, or other behaviors that pose a danger to you, your family or other household members.

WHAT IF I AM AFRAID TO SEE THE RESPONDENT IN COURT?

When you arrive at court, notify a court officer that you are afraid to see the respondent. The officer can arrange for you to stay in a Safe Horizon office. Make sure that a court officer knows you are there and where you are waiting. A court officer can escort you from one location to another or help to keep the respondent away from you. You may also bring a friend, relative or an advocate to court with you.

WHAT IF I DECIDE NOT TO PURSUE THE ORDER OF PROTECTION?

You may change your mind once you have started the case. If you decide not to go forward with the order of protection, you may wish to come back to court or send a letter asking that your petition be withdrawn "without prejudice." This means you can file the petition again if needed. You can always come back to court if respondent does something else to scare or harm you.

WHAT IF THE RESPONDENT VIOLATES THE ORDER OF PROTECTION?

Call 911. It is a crime to violate an order of protection. If the respondent does not obey the order, then you can call the police. The police may arrest the respondent for violating the order of protection. The respondent does not have to hit you to violate the order. If the respondent comes to your home and the order says s/he cannot, then you should call the police. You also have the right to file a violation of the order in Family Court. You can choose to go to family court, the police or both.

WHAT IF MY FINAL ORDER OF PROTECTION IS ABOUT TO EXPIRE AND I STILL FEEL THAT I NEED ONE?

If you still feel that you need an Order of Protection you can ask the Court to extend it. To do so you must go to the Petition Room and file a petition to extend it before the Order of Protection expires. Your petition must include the reasons why it should be extended.

WHAT IS THE INTEGRATED DOMESTIC VIOLENCE COURT (IDVC)?

The IDV Court will hear cases that you and the respondent have in Family Court and Criminal Court. If either you or the respondent is arrested for domestic violence against the other, the Criminal Court and Family Court cases may be transferred to the IDV Court. In the IDV Court, the same judge will hear both the Criminal and Family Court cases. The District Attorney will prosecute the criminal matter. If you begin a divorce case while your other cases are pending, that will also be heard in the IDV Court.