

Order of Protection in New York

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What is an Order of Protection?

- An Order of Protection is a court order that tells one person what they cannot do to another person, or what contact is allowed.
- Sometimes an Order of Protection is also called a restraining order.

What does an Order of Protection say?

- An Order of Protection can require a person to stay away from another person, their home, school and work. The order could also prohibit some types of contact with the other person, or even all contact. The court can make exceptions such as to arrange visitation with a child.
- An Order of Protection may allow some contact. However, it will almost always order a person to commit no crimes against the other person or do anything offensive toward the other person. This is sometimes called a "Refrain From Order." Violating it is a more serious crime of "criminal contempt."

Which courts issue Orders of Protection?

- Criminal Court and Family Court can issue Orders of Protection. The person requesting the Order of Protection can go to either or both courts for the same problem.

How do I get an Order of Protection through Criminal Court?

- If you are threatened or harmed by another person, you can call the police or go to the police station to report a crime. The police can charge the other person with a crime and during any of the court appearances in Criminal Court, the court can issue an Order of Protection.

- The District Attorney prosecutes the defendant for the alleged crimes. You do not participate in the case other than as a witness so you do not need an attorney. The District Attorney's office may have a "Victim-Witness Coordinator" who could assist you.

How do I get an Order of Protection through Family Court?

- You can file a family offense petition in Family Court to request an Order of Protection.
- You must have a certain relationship with the other person. You can be current or former spouses, be related by blood or marriage, or have a child together. You can have a current or former intimate relationship, which means a relationship that is more than a casual or workplace relationship or a connection through third parties.
- You must allege and prove that the other person committed certain crimes against you.
- During any of the court appearances, Family Court can issue a Temporary Order of Protection, even if there is no proof yet that the Respondent broke the law.
- Either person in a family offense case has the right to an attorney. An attorney will be assigned to represent either if he/she cannot afford one.

How long does an Order of Protection last?

- While the case is open, the court can issue a temporary Order of Protection. It has an expiration date before the case is closed and it can be renewed as the case continues.
- At the end of the case, the court can issue a permanent Order of Protection. It usually lasts one year. In certain circumstances, it can last up to five years.

Can an Order of Protection be changed?

- Either person can ask the court to change the Order of Protection. The Family Court cannot change an order that was issued by the criminal court.
- The court might add exceptions to an Order of Protection to allow visitation with a child.
- The court might change a "refrain from" Order of Protection to a "stay away" Order of Protection if the situation worsened.

- The court might change a “stay away” Order of Protection to a “refrain from” Order of Protection if the situation improves and the two people need or want to have contact.
- Before the order expires, it can be extended for a longer period, if there is a good reason for that.

Forms and information about Orders of Protection are available at the New York Office of Court Administration website at <http://ww2.nycourts.gov/forms/familycourt/domesticviolence.shtml>

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This article provides general information about this subject. Laws affecting this subject may have changed since this article was written. For specific legal advice about a problem you are having, get the advice of a lawyer. Receiving this information does not make you a client of our office.

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