

# What is a Family Offense in New York?

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In NY, if you are related to the offender (blood, marriage, or a close relationship), you have the option of applying to Family Court for an Order of Protection. The burden of proof is lower in Family Court than in a criminal case (less than beyond a reasonable doubt). However, you still must prove that the other party committed an actual crime. It can't be based only on what you worry they might do, or that they are annoying you. Not all crimes are considered to be family offenses.

**Enumerated Crimes:** The behavior alleged in the Family Court petition must be one of the following enumerated crimes: (see FCA §812 & §821)

* Disorderly Conduct Criminal Mischief (new in Nov. 2007)	* Menacing 3 <sup>rd</sup>	*
* Harassment 1 <sup>st</sup> Sexual Misconduct (new in Dec. 2009)	* Reckless Endangerment	*
* Harassment 2 <sup>nd</sup> Forcible touching (new in Dec. 2009)	* Assault 2 <sup>nd</sup> & 3 <sup>rd</sup>	*
* Aggravated Harassment 2 <sup>nd</sup> Sexual abuse, 2 <sup>nd</sup> & 3 <sup>rd</sup> (new Dec. 2009)	* Attempted Assault	*
* Menacing 2 <sup>nd</sup> .	* Stalking 1 <sup>st</sup> , 2 <sup>nd</sup> , 3 <sup>rd</sup> , & 4 <sup>th</sup>	

New offenses in 2011: \* Obstruction of breathing or blood circulation, or strangulation

New offenses in 12/2013: \* Identity Theft  
Coercion

\*Grand Larceny \*

New offenses 9/21/2019: \* Unlawful dissemination or publication of an intimate image

The following is a brief overview of the “family offense” crimes outlining the behavior that constitutes each crime. A Family Court petition should include allegations of the necessary elements of the offense, or it is subject to dismissal. It should be specific about when and where the offense happened.

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1. **Disorderly Conduct** (Penal Law §240.20)

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1. Legal Definition: Intentionally creating a disturbance, inconvenience or alarm by fighting, tumultuous, violent or threatening behavior.

Note: Family Court Act does not require a public disturbance, unlike a criminal case.

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2. This is a Violation (maximum criminal penalty is 15 days, monetary fine - Penal Law §70.15).

2. **Harassment 1<sup>st</sup>** (Penal Law §240.25) - very similar to newer crime of Stalking 4<sup>th</sup>

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1. Legal Definition: Intentionally and repeatedly harasses another person by:

- following a person in a public place, or
- engaging in a course of conduct or committing acts which place a person in a reasonable fear of physical injury.

This is a Class B Misdemeanor (maximum criminal penalty is 3 months) .

Note: It is important to document the pattern with police reports as incidents occur.

### 3. **Harassment 2<sup>nd</sup>** (Penal Law §240.26)

#### 1. Legal Definition: With intent to harass, annoy, or alarm, a person:

- Strikes, shoves, kicks, subjects to physical contact, or attempts or threatens to do so
- Follows a person in a public place
- Engages in course of conduct or repeatedly commits acts which annoy or alarm.

#### 3. This is a Violation under Criminal Law.

Note: There can be physical injury, however, it is not necessary in order to have a charge filed.

### 4. **Aggravated Harassment 2<sup>nd</sup>** (Penal Law §240.30)

#### 1. Legal Definition: With intent to annoy alarm, threaten or harass another:

- communicates or causes a communication by mechanical or electronic means anonymously or otherwise by telephone, telegraph, mail, or other form of written communication
- makes a telephone call whether there is conversation or not, with no legitimate purpose to communicate
- commits an act of Harassment 1<sup>st</sup> and has previously been convicted of Harassment 1<sup>st</sup> within the past ten years.

This crime also is a type of “stalking”, but no pattern requirement- compare to the newer statutes.

2. Key Elements of Behavior: intent, harassing contact by phone or mail, including hang up calls for no legitimate purpose; repeat conviction for Harassment 1<sup>st</sup>.

Mere insults or offensive language will not qualify, particularly if said in the context of two way communications. The offense must be such that “substantial privacy interests are being invaded in an essentially intolerable manner”.

3. This is a Class A Misdemeanor (maximum criminal penalty is one year) .

4. **Menacing 2<sup>nd</sup>** (This is a Class A Misdemeanor) (Compare to the newer crimes of “stalking”)

1. Legal Definition: Intentionally places a person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon or dangerous instrument; Repeatedly follows or engages in a course of conduct or commits acts over a period of time which place a person in reasonable fear of physical injury, serious physical injury or death; Violates an order of protection (duly served or which he has actual knowledge of) by committing an act of Menacing 3<sup>rd</sup>.

2. Key Elements of Behavior: intent, puts a person in fear of physical injury or death by display of a weapon; repeated action over a period of time.

6. **Menacing 3<sup>rd</sup>** (Penal Law §120.15 - This is a Class B Misdemeanor)

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1. Legal definition: by physical menace places or attempts to place a person in fear of death, imminent serious physical injury, or serious injury.

(2) Key Elements of Behavior: puts someone in fear of injury or death without a weapon.

7. **Reckless Endangerment 1<sup>st</sup>** (This is a Class D Felony-criminal penalty of 3 to 7 years) (Penal Law §120.25)

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1. Legal Definition: With depraved indifference to human life, creates a grave risk of death to another.

8. **Reckless Endangerment 2<sup>nd</sup>** (This is a Class A Misdemeanor) (Penal Law §120.20)

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1. Legal Definition: Recklessly places another person in substantial risk of serious physical injury.

1. **The Assault Crimes**: (Penal Law §120)

**Assault 3<sup>rd</sup>** : (Class A Misdemeanor - maximum criminal penalty of 1 year)

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1. Legal Definition: With intent to cause physical injury causes physical injury, or recklessly causes physical injury, or with

criminal negligence causes physical injury by means of a deadly weapon or dangerous instrument.

**Assault 2<sup>nd</sup>** : (Class D Felony - criminal penalty of 3 to 7 years)

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2. Legal Definition: Intends to cause serious physical injury and does; or intends to cause physical injury or recklessly causes serious injury, and does, by means of a deadly weapon or dangerous instrument.

**Assault 1<sup>st</sup>** : (Class C felony - criminal penalty of 3 to 15 years)

Intends to cause serious physical injury (or sometimes is reckless), and does so with a weapon. This is not Family Court Jurisdiction - but attempt of it is.

Serious Injury (Penal Law §10.00): creates a substantial risk of death, or causes protracted impairment of health or of bodily function.

“Physical” Injury: impairment of physical condition or substantial pain.

“Weapons” & “Dangerous Instruments” are defined at Penal Law §10.00 (12.)

**Attempted Assault** : means all elements of assault are present, e.g. intent, (but assault is not completed).

(Penal Law §110.05 - Class B misdemeanor, or Class D felony)

j. **The Stalking Offenses** (December 1999 amendments)

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3. **Stalking 4<sup>th</sup>** (Penal Law§120.45 - Class B Misdemeanor - maximum criminal penalty is 3 months)

Legal Definition: Intentionally & for no legitimate purpose engages in a course of conduct directed at a person & should know that such conduct:

(1) Is likely to cause fear of material harm to physical health, safety, or property of that person or someone close to them; OR

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2. Is likely to cause fear that employment or business is threatened, if the conduct involves contact at the person's place of employment, after having clearly been told not to; OR

3. Causes material harm to mental or emotional health by phoning or contacting the person or a person close to the person, after having clearly been told not to.

Note: Document the pattern of repeated conduct, as well as a clear notice to cease - including in the notice the effect of the conduct, may assist in proving intent & knowledge.

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4. **Stalking 3<sup>rd</sup>** (Penal Law§120.50 - Class A Misdemeanor) "Serial Stalking"

Legal Definition:

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      2. Stalking 4<sup>th</sup> if against 3 or more persons, in three or more separate transactions; OR
      3. Stalking 4<sup>th</sup> if previously convicted in the preceding 10 years of certain other crimes against the victim or a member of her/his family, or previously convicted of stalking 4<sup>th</sup> against anyone; OR
      4. With intent to harass, annoy, or alarm, intentionally engages in course of conduct likely to cause reasonable fear of physical injury, sex offense, kidnapping, unlawful imprisonment, or death of the victim or a member of her/his family.

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    5. **Stalking 2nd** (Penal Law§120.55 - Class E Felony- criminal penalty of 3 to 4 years)

Legal Definition:

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      2. Commits Stalking 4<sup>th</sup> and displays what appears to be a firearm, or displays, possesses and threatens use of other weapons; OR
      3. Stalking 3<sup>rd</sup> subd. 3. , if previously convicted in the preceding 5 years of certain other crimes against the victim or a member of her/his family; or Stalking 4<sup>th</sup> if previously convicted twice of stalking 3<sup>rd</sup> against anyone within the



- last 10 years; OR
4. If over age 21, stalks a person under age 14.

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6. **Stalking 1st** (Penal Law §120.60 - Class D Felony- criminal penalty of 3 to 7 years)

Legal Definition:

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2. With intent to harass, annoy, or alarm, intentionally engages in course of conduct likely to cause reasonable fear of physical injury, sex offense, kidnapping, unlawful imprisonment, or death of the victim or a member of her/his family (Stalking 3<sup>rd</sup> ), AND therein:
3. Intentionally or recklessly causes physical injury; OR
4. Commits certain sex offenses;

- k. **Criminal Mischief** (There are 4 degrees of this offense, ranging from Misdemeanor to Felony -criminal penalties vary based upon the amount of damage caused) (Penal Law §145)

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1. Legal Definition: Having no right to do so, or reasonable ground to believe he has such right, intentionally or recklessly damages the property of another person.
2. Key Elements of Behavior: Requires proof of damage to or destruction of the property, and proof that property was owned by someone else (not solely the property of the accused). Intent or reckless behavior

must be proved. The Family Court will have jurisdiction if the destroyed property was jointly owned by the petitioner and the accused. If seeking restitution, evidence must be presented to establish the value of the property or cost of repair.

l. **Sexual Misconduct** (Penal Law §130.2 - a Class A Misdemeanor)

(1) Legal Definition: Engages in sexual intercourse or oral or anal sexual conduct with another person without such person's consent.

m. **Forcible Touching** (Penal Law §130.52 - a Class A Misdemeanor)

(1) Legal Definition: Intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire. Includes squeezing, grabbing or pinching.

n. **Unlawful dissemination of an intimate image** (Penal Law §245.15 - a Class A Misdemeanor)

(1) Legal Definition: with intent to cause harm to the emotional, financial or physical welfare of another person, he or she intentionally disseminates or publishes a still or video image of such other person, who is identifiable from the still or video image itself or from information displayed in connection with the still or video image, without such other person's consent, which depicts:

(i) an unclothed or exposed intimate part of such other person; or

(ii) such other person engaging in sexual conduct as defined in subdivision ten of section 130.00 of

this chapter with another person; and

(b) such still or video image was taken under circumstances when the person depicted had a

reasonable expectation that the image would remain private and the actor knew or reasonably should

have known the person depicted intended for the still or video image to remain

private, regardless of

whether the actor was present when the still or video image was taken.

"Intimate part" means the naked genitals, pubic area, anus or female nipple of the person.

"Disseminate" and "publish" shall have the same meaning as defined in Penal Law §250.40 : "Disseminate" means to give, provide, lend, deliver, mail, send, forward, transfer or transmit, electronically or otherwise to another person. "Publish" means to disseminate, with the intent that such image or images be disseminated to ten or more persons; or that such images be sold by another person; or to disseminate, post, present, display, exhibit, circulate, advertise or allow access, electronically or otherwise, so as to make an image or images available to the public.

o. **Sexual Abuse, 2<sup>nd</sup> & 3<sup>rd</sup> degree** (Penal Law §130.55 - a Class A or B misdemeanor)

(1) Legal Definition: Subjects another person to sexual contact without the latter's consent; (but not applicable to 14 to 16 year olds incapable of consent, unless the perpetrator was at least 5 years older). The more serious 2<sup>nd</sup> degree offense applies if the victim is incapable of consent for a reason other than age, or is under age 14.

p. **Criminal Obstruction of Breathing or Blood Circulation**, (Penal Law §121.11 - a Class A misdemeanor)

(1) Legal Definition: with intent to impede the normal breathing or circulation of the blood of another person, a person: applies pressure on the throat or neck of such person; or blocks the nose or mouth of such person.

q. **Strangulation, 2<sup>nd</sup> degree**, (Penal Law §121.12 - a Class D felony)

(1) Legal Definition: A person is guilty of strangulation in the second degree when he or

she commits the crime of criminal obstruction of breathing or blood circulation, as defined in section 121.11 of this article, and thereby causes stupor, loss of consciousness for any period of time, or any other physical injury or impairment.

r.        **Strangulation, 1st degree**, (Penal Law §121.13 - a Class C felony)

(1)       Legal Definition: A person is guilty of strangulation in the second degree when he or

she commits the crime of criminal obstruction of breathing or blood circulation, as defined in section 121.11 of this article, and thereby causes serious physical injury to such other person.

s.        **Identity theft , 1<sup>st</sup> degree** (Penal Law §190.80 - a Class D felony)

(1)       Legal Definition: A person knowingly and with intent to defraud assumes the identity of another person, by presenting himself or herself as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby: obtains goods, money, property or services or uses credit in the name of such other person in an aggregate amount that exceeds two thousand dollars; or causes financial loss that exceeds two thousand dollars; Identity theft is also committed if a crime is committed while using another person's identity.

t.        **Identity theft , 2nd degree** (Penal Law §190.79 - a Class E felony)

(1)       Legal Definition: identity theft where the damages or loss amount is \$500 or more.

u.        **Identity theft , 3rd degree** (Penal Law §190.78 - a Class A misdemeanor)

(1) Legal Definition: identity theft where there are damages or loss of any amount.

v. **Grand Larceny, 4<sup>th</sup> degree** (Penal Law §155.30 - a Class E felony)

(1) Legal Definition: A person is guilty of 4<sup>th</sup> degree larceny when he and she steals property valued over \$1,000, or a credit or debit card, a firearm, a motor vehicle, extorted property, or a device intended to be used to steal phone service.

w. **Grand Larceny, 3<sup>rd</sup> degree** (Penal Law §155.35 - a Class D felony)

(1) Legal Definition: Where the property stolen is valued over \$3,000.

x. **Coercion, 2<sup>nd</sup> degree,** (Penal Law §135.60 - a Class A misdemeanor)

(1) Legal Definition: A person is guilty of coercion when he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he or she has a legal right to engage in, by means of instilling fear by various prohibited means or acts which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his or her health, safety, business, calling, career, financial condition, reputation or personal relationships.

B. Penalties for Violation of an Order of Protection:

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1. Family Court: Only has jurisdiction over violations of Family Court orders, or orders from other states. The maximum penalty for “contempt of court” in the Family Court is 6 months in jail. FCA §846-a.

1. If you want to pursue more serious charges for criminal contempt of court, do not ask that the court punish for contempt in the Family

Court! This could cause the criminal case to be dismissed for “double jeopardy”. However, if you want your order modified, or made to last for a longer period because it had been violated, you could still have that handled in the Family Court.

b. Criminal Courts: available penalty of 3 to 7 years for criminal contempt in some cases. Penal Law §215.50 3. Criminal Contempt 2<sup>nd</sup> is a Class A misdemeanor (Class A Misdemeanor - maximum criminal penalty of 1 year)

#### Related Proceedings:

Effective October 1, 2007, a domestic violence victim who is granted an order of protection may also have the right to early termination of a lease, if relocation is required to substantially reduce a risk of physical or emotion harm to the victim or the victim’s child. Before seeking a court order for the lease termination, the victim must first have attempted to negotiate a termination with the landlord, without success. See RPL §227-c. Law-NY can provide a form that can be used to make the request to the landlord.

(c) Legal Assistance of Western New York, Inc. ®

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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