
FAMILY COURT

ORDER OF PROTECTION

INFORMATION SHEET

INTRODUCTION

This handout will help you understand how to file for an order of protection in **Family Court**. If you are filing the petition, then you are the **petitioner**. The person you are filing against is the **respondent**. Family Court deals with a large number of cases and the process may take longer than you would like. It could take you a day to file a petition and request a temporary order of protection. Depending on the time you arrive at court, you may see a Judge after 5:00 p.m. or may have to come back the next day. Childcare is available for children one year and over from 9:00 - 5:00, Mon.-Fri. This handout will help you understand this process.

WHO CAN FILE A PETITION IN FAMILY COURT? You can file a petition in Family Court for an order of protection if 1) you are related to the respondent by blood or marriage (family or in-laws); 2) you are or were legally married to the respondent, regardless of whether you still live together; 3) you have a child with the respondent; 4) you are or have been in an intimate relationship with the respondent regardless of whether you lived together. The court will decide if your relationship is “intimate”

WHAT SHOULD I PUT ON MY PETITION? Write down as many details as possible. In order to obtain an order of protection you must state that a “family offense” occurred. Many actions are family offenses, such as when a person verbally,

by considering things like how long you were in a relationship, and how often you see or saw each other, even if you never had sex with the respondent. You cannot get an order of protection against someone you know casually or just from work.

If you need an order of protection against someone else, you can only get one through Criminal Court. To get a criminal court order of protection, the police must arrest the person or you may go to the Court Dispute Resolution Center. You may proceed for orders of protection in Family or Criminal Court or both.

HOW DO I FILE A PETITION IN FAMILY COURT? You must go to the "Petition Room" between 8:30-5:00 Mon.-Fri., or until 8 p.m. Tues.-Thurs. (If you file at night, other court dates will be during the day.) After you tell the clerk at the front desk you are there, you will be given forms to fill out, including one to write down the incidents of violence. When your name is called, you will see a clerk who will write the petition based on the information you gave on the form.

physically, emotionally, or sexually abuses you, or threatens to hurt you. Describe when each incident occurred, where it occurred, what happened, whether you were injured (bruises, cuts), and whether weapons were used. It is best to include the **most**

recent incident, the **first** incident and the **worst** incident. If there was verbal abuse, tell the clerk the exact words the respondent used. Tell the clerk if there is criminal court involvement and if there were earlier orders of protection. Before you sign the petition, read it carefully and tell the petition clerk if anything important has been left out. **Make sure the petition is accurate and fully states what you want to tell the Judge.**

What can I ask for in my petition? Most temporary orders of protection say that the respondent must not assault, menace, or harass you, but you can ask for additional terms. You must tell the petition clerk specifically what you would like the Judge to order. Some of these things may be in the **temporary** order and some may be in the **final** order. You can ask for:

1) Stay away: The court can order the respondent to stay away from you, your home, your job, your children, your children's school or any other place or person the court finds necessary.

2) Refrain from certain acts: The court can order the respondent to stop abusing or threatening to abuse you or your children. The order can be specific, such as, ordering the respondent to stop calling you at work.

3) Collect your belongings: If you do not want to return home, you can ask the

7) Five year order: Most family court orders of protection are for two years. You can get a five year order of protection if there are "**aggravating circumstances**", or if the court finds there was **a violation of an order of protection**. Aggravating circumstances exist where there is physical injury, the respondent used a weapon or

court to allow you to enter your home with the police to collect your personal belongings at a certain date and time.

4) Exclude the respondent from the home: If the respondent is dangerous to you or your children, you can ask the court to order the respondent out of the home ("excluded") while the order of protection is in effect. It does not matter that the home is not in your name.

5) Temporary child support: The court can order temporary child support based on the needs of the child. You do not have to show how much money the respondent has or earns. Since the child support is only temporary, you will still have to file a separate petition for child support. You can do this in Family Court. The case will be heard by a Support Magistrate in about two or three months, but you can get support back to the date you filed the petition.

6) Revoke or suspend firearms: The court can revoke or suspend respondent's license to carry firearms or order surrender of any or all firearms owned or possessed by respondent.

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

A temporary order of protection is issued on the day you file for an order of protection before the respondent is served with the papers. It only lasts until the next time that you are in court. The court usually will extend the temporary order at each court date until the case is over. If a final order of protection is issued, this occurs at the end of the case after the Judge finds that a family offense was committed or the respondent agrees. A final order lasts for two or five years. A final order of protection can also include:

1) Restitution: If the respondent damaged any of your property (e.g. car, windows, furniture), the court can order the respondent to pay damages ("restitution") up to \$10,000. You will have to prove the value of what was damaged.

2) Medical expenses: The court can order the respondent to pay for any medical expenses arising from the abuse.

3) Participation in a Program: The court can order the respondent to participate in services, such as a batterer's education program, or make referrals for drug or alcohol counseling.

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

WHAT DO I SAY TO THE JUDGE?
The Judge may ask you questions about what you said in the petition. The Judge will decide whether to issue a temporary order based on your petition and answers to

1) Custody: You can ask the court to order that the respondent not interfere with custody of your children as part of the order of protection. This order will last for as long as the order of protection does. You may also file a separate petition for custody. The clerk will help you file a petition for custody. Either parent can file a petition for final custody at any time.

2) Visitation: The court may order visitation for either parent as part of the order of protection. The court can specify times for the visits and safe places to exchange the child, such as a police precinct or friend's home. If necessary, the court can order supervised visits. The visitation order will last only as long as the order of protection. Either parent may file a separate petition for visitation at any time. However, the court may direct that a separate petition be filed to determine this issue.

WHEN WILL I SEE THE JUDGE?

After the clerk drafts the petition, you will wait to see a Judge on the second floor. The Judge will review the petition and determine whether there is good cause to issue you a temporary order of protection. The Judge will order a summons to serve on the respondent and a date to come back.

the questions. Tell the Judge if you want the respondent excluded or need temporary child support. Even if the Judge does not issue the temporary order of protection, you may get one later. If you can't afford a

lawyer, you can ask the Judge to appoint one for you.

The Judge will ask you how you want to serve the papers. (The different options are listed below.) The court may issue a warrant directing that the respondent be brought immediately before the Family Court. Warrants are issued under special circumstances, such as when your safety or the safety of your child is at risk.

WHERE DO I GET THE TEMPORARY ORDER? After you have seen the Judge, you must wait to pick up your papers. You will receive your copies of the temporary order of protection, if one has been issued. You will also receive a summons and copy of the petition for the respondent, if you are arranging service on the respondent.

DOES THE RESPONDENT HAVE TO KNOW ABOUT THE PETITION? Yes. You can not get a final order of protection unless the respondent has received notice of the case.

HOW DO I SERVE THE PETITION AND TEMPORARY ORDER OF PROTECTION? The summons with notice, petition for an order of protection and temporary order of protection must be **personally served** (handed to) the respondent. Any person over eighteen years old, except you, may serve these papers. The police, a friend or relative can serve the papers. You can also hire a process server. **You (the petitioner) may never serve the papers yourself.** Papers for an order of protection may be served any day of the week at any time of the day or night.

1) Service by police:

There are two ways to have the police serve the papers. You can take the papers to the precinct yourself and go with the police to serve the papers, or the Court can send them to the precinct. Usually, taking the papers to the precinct yourself is best because you will know whether the papers have been served and it is easier to get proof of service.

If you want the police to serve your papers, go to the precinct where the respondent lives, works, or is to be served. The police may ask you to go with them. (You will remain in the police car.) Sometimes, the police will let you give them a picture of the respondent instead of asking you to go with them. The police are required to make six attempts to deliver the papers. Once the respondent has been served, the police must give you a "Statement of Personal Service" which does not need to be notarized. If the police have been unable to deliver the petition after six attempts, they must give you a statement showing the date and times of the attempts. **Ask the police officer for the statement of personal or attempted service and make sure it is signed. Bring this statement with you on the next court date.**

2) Service by relative, friend, or process server:

If a friend or relative gives the papers to the respondent, 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 will be postponed or dismissed. You may also bring the person who served the papers with you to court.

WHAT IF I DON'T KNOW WHERE THE RESPONDENT LIVES? The respondent may be served anywhere. As long as you can arrange for the respondent to be personally served with the court papers, it will not matter if you don't know where the respondent lives.

WHAT IF THE RESPONDENT HAS NOT BEEN SERVED? You should come back to court even if you have not been able to serve the respondent. Tell the Judge the efforts you made to serve the respondent. If the police attempted service, note the date and times, precinct number, and officers' names who attempted service. Try to get a statement from the police showing their attempts to serve the Respondent. If someone other than police attempted service, write down the dates, times, and places that service was attempted. When you return to court, the Judge may give you more time to try to serve the papers on the Respondent. You can ask the Judge for other ways to serve the respondent, such as service by certified mail. You can also ask the court to issue a warrant if you can not find the respondent or if he is avoiding service.

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 pursue 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 that if you change your mind again, and wish to re-file at a later date, you can raise the same allegations again in a new petition. You can always come back to court if a new incident occurs.

WHAT HAPPENS IF I DON'T COME BACK TO COURT? It is very important for you to come to court on your adjourn date. In case of a serious emergency, send someone in your place to explain your absence or notify the court by phone or in writing. It is up to the Judge to decide whether to grant you an adjournment. If you do not appear, your case may be dismissed and you will no longer have a temporary order of protection.

WHAT IF I AM AFRAID TO SEE THE RESPONDENT IN COURT? When you arrive at court, notify a court officer in the part (courtroom) where your case is being heard that you are afraid to see the respondent. The officer can arrange for you to stay in a place away from the respondent until the Judge calls your case. One possibility is the Safe Horizon Reception area. Make sure that a court officer knows you are there and where you are waiting. You can ask a court officer to escort you from one location to another or to help keep the respondent away from you. You may also bring a friend, relative or an advocate to court with you who can come with you into the courtroom.

WHAT HAPPENS WHEN I COME BACK TO COURT ON THE NEXT COURT DATE? You will have to return to court to ask for your final order of protection. The respondent has the right to a hearing. You may see a different Judge from the one you saw the first time. The Judge you see on the next court date is the Judge likely to decide your case.

If the respondent does not come to court: You will be asked to show the Judge that the respondent was properly served. You will need to give the Judge an affidavit of service from a relative or friend, or a statement of service from the police. If the court finds that the respondent was not properly served, your petition may be dismissed or you may be given more time to serve. If there are serious allegations, the court might also issue a warrant to bring the respondent back to court immediately.

If the court finds the respondent was properly served, the court will ask you to explain the incidents that you allege in the petition. This is called an Inquest. Be specific: speak clearly and organize your thoughts. Don't forget to tell the Judge if a weapon was used or you were injured. If the Judge finds that a family offense has occurred, the Judge will issue a final order of protection. You will get a copy before you leave. The court will send the order to the respondent but you may want to have the police serve the final order as well. This is important in case the respondent violates the order.

If the respondent comes to court: Typically, you will see a court attorney (the Judge's law assistant) before you see the Judge. You can ask to speak to the court attorney separately from the respondent. The court attorney will ask the respondent if he or she will agree, to the final order of protection. Two things can happen:

a) If the respondent agrees to an order of protection: When respondents agree to an order of protection, they usually

WHAT IF THE RESPONDENT VIOLATES THE ORDER OF PROTECTION? It is a crime to violate a

consent to the order without admitting that they have done anything wrong. This means the court has not made a finding against them. An order without a finding ("on consent") has the same effect and will protect you the same way that an order after a trial would. If the order is violated, the respondent can be arrested. However, an order on consent does not establish that the respondent did anything wrong for use in other proceedings, such as custody or visitation.

b) If the respondent does not agree to the order of protection: If the respondent does not agree to an order of protection and all of the terms you asked for, your case will go to trial. If there is a trial in your case, there may be several court dates before it is resolved. You will have the opportunity to tell the Judge your story and present evidence in support of your case.

AM I ENTITLED TO AN ATTORNEY? Both petitioners and respondents in family offense cases are entitled to court-appointed ("18-B") attorneys if they are "indigent" (cannot afford to retain an attorney). Only the Judge can decide if you qualify for an 18-B attorney. Tell the Judge if you want to be considered for assigned counsel. You can ask for one at any time. You can also try to find an attorney on your own. There is a list of legal services offices on pages 8. If your case goes to trial, you may need an attorney.

temporary or final order of protection. If the respondent does not obey the order, then you can call the police. The police will

probably 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 he can't, then you can call the police. You also have the right to file a violation of the order in Family Court. Filing a violation in Family Court usually will not result in arrest of the respondent. You can choose to go to Family or Criminal Court, or both.

DOMESTIC VIOLENCE RESOURCES

EMERGENCY HOTLINE:

Safe Horizon 24-Hour Hotline

1-800/621-HOPE. 24 hour domestic violence hotline provides domestic violence counseling, safety planning services and referrals to domestic violence shelters.

COUNSELING, SUPPORT GROUPS AND SPECIAL SERVICES:

Arab American Family Support Network

718/643-8000. Provides domestic violence counseling in Arabic and English.

Barrier Free Living

212/533-4358. Provides domestic violence services for persons with disabilities in Spanish, English and American Sign language.

Center for Immigrant's Rights

212/505-6890. Provides information and assistance for immigrants, including domestic violence services, English, Spanish, Chinese, Greek and Polish.

Gay and Lesbian Anti-Violence Project

212/714-1141. Provides domestic violence services in same-sex relationships in English and Spanish.

Help Roads

718/922-7980. Provides domestic violence services for adults and children in English and Spanish.

Jewish Association for Services for the Aged

(JASA) 718/486-9515. Provides counseling, support services and legal representation to elder abuse victims.

Jewish Board of Family and Children's Services 718/676-4210; 718/435-5700. Provides counseling, including domestic violence services, for adults and children in English, Russian, Yiddish and Hebrew.

Korean American Family Services Center 24 Hour Hotline 212/460-3800. Provides domestic violence and counseling services in Korean and English.

New York Asian Women's Center

1-888-888-7702; 212-732-5230. Provides domestic violence services for adults and children in Cantonese, Mandarin and Korean. Other Asian languages by arrangement.

SAKHI for South Asian Women 212/868-6741.

Provides domestic violence services for adults and children in English and South Asian languages.

Sanctuary for Families

212/349-6009. Provides counseling and full range of domestic violence services for adults and children in English and Spanish.

CAMBA Stop the Violence

718/826-2223. Provides domestic violence referrals, counseling, advocacy in English, Creole and Spanish.

STEPS 212/662-7914 Alternatives to Incarceration provides legal advocacy and support to women involved in the criminal justice system. Programs for adolescent male batterers.

Violence Intervention Program 212-410-9080

Shelters with social services for women and children. Non-residential crisis intervention, counseling and support.

LEGAL SERVICES

Break the Cycle 1-800-214-4150 Serves individuals aged 22 and under seeking orders of protection and related Family Court matters.

InMotion, Inc.

212/695-3800. Referral for pro bono representation in matrimonial and family law matters.

New York Legal Assistance Group

212/613-5000. Provides representation and consultation in family law matters including orders of protection, custody, visitation and support orders and

uncontested and contested divorces.

Sanctuary for Families/Center for Battered Women's Legal Services

212/349-6009. Provides advocacy, information and legal representation in orders of protection, custody, **Urban Justice Center**

212/533-0540. Provides advocacy in domestic violence matters where help is needed to obtain police protection.

Safe Horizon

Domestic Violence Law Project

212/577-3220. The Law Project provides direct representation, advocacy and referrals to domestic violence victims seeking orders of protection, custody, child support, and divorce, and works with other Safe Horizon programs to assist with housing transfers, immigration, criminal advocacy and counseling.

ROBERT B. MCKAY

COMMUNITY OUTREACH LAW PROGRAM

Association of the Bar of the City of New York

42 W. 44th Street, New York, NY 10036

Attorneys prepare waiver applications for battered women applying for permanent residence.

212-382-6629

Shield Program -Matrimonial and family law.

Monday - Friday 9 a.m. - 1 p.m. **212-626-7383**

SAFETY PLANNING

- Safety planning is very important after you get an Order of Protection.
- Decide whether it is safe to return home or whether you should go to a shelter or other safe place.
- Have important phone numbers available to yourself and your children. Including police, 911, **24-hour Domestic Violence Hotline (800) 621-4673**, and friends or relatives.
- Keep a copy of your TOP with you at all times. File a copy with the police precinct, children's school, babysitter, and neighbor.

visitation, immigration and divorce in domestic violence cases.

- Tell child care providers and school officials the names of the people who have permission to pick up your children. Instruct them not to release the children to anyone else.
- If the abuser violates the TOP call the police immediately.
- Ask neighbors to call the police if they see the abuser near your home or if they hear any suspicious activity coming from your apartment.
- Plan an escape route out of your home in case of an emergency and teach it to your children.
- Pack a bag with important things you would need if you had to leave in a hurry and put it in a safe place. Include cash, ATM card, check book, car and house keys, important documents such as social security cards, birth certificates, driver's license, passport or green card, work permit, welfare ID, medication, police reports, a change of clothing, and a favorite toy for each child.
- Consider changing the locks to your home or apartment and getting locks for the windows. Safe Horizon, Project Safe will change your locks for free.
- You should consider getting an unlisted telephone number and use an answering machine or caller ID to screen your calls.
- Change your regular travel habits and shop and bank at different places.