

How to Get an Order of Protection

Which court do I go to for an Order of Protection?

You can obtain an Order of Protection in either through a Criminal Court proceeding or by filing a petition in Family Court.

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

If the police have made an arrest, an Order of Protection may be issued at the time of Defendant's arraignment. You do not need to be related to the perpetrator in any way.

Can I get an Order of Protection in Family Court?

To get an Order of Protection in Family Court you must be in a qualifying relationship AND be the victim of a Family Offense.

What is a qualifying relationship?

To get an Order of Protection from the Family Court, you must be related to your abuser in any one of the following ways:

1. Related by blood or marriage
2. Have children in common
3. Married or formerly married
4. Parent and child
5. Be in an intimate or dating relationship

What does related by blood or marriage mean?

Related by blood would mean individuals in your immediate and extended family like your mother, father, brother, sister, cousin, uncle, aunt, etc.

Related by marriage will mean either your spouse or individuals who became related to you through your spouse by virtue of your marriage, like your brother-in-law, sister-in-law, mother-in-law, father-in-law, spouse's cousin, spouse's aunt or uncle. However, these relations apply only if you are still married to your spouse.

What is "an intimate or dating relationship"?

The court can consider several factors when determining whether or not you are in an intimate or dating relationship. Those factors include: the nature or type of relationship, regardless of whether

the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. You must be more than casual acquaintances or friends.

What is a Family Offense?

A Family Offense is a specific crime outlined in Family Court Act §812 and further defined by NY Penal Law as listed below.

- Disorderly conduct
- Harassment in First or Second degree
- Aggravated harassment in second degree
- Assault in second or third degree
- Criminal mischief
- Menacing in second or third degree
- Reckless endangerment
- Stalking
- Attempted assault
- Sexual abuse in the second or third degree
- Sexual misconduct
- Forcible touching
- Strangulation
- Criminal obstruction of breathing or circulation
- Identity theft
- Grand Larceny
- Coercion
- Unlawful dissemination or publication of an intimate image

Is there more than one type of Order of Protection?

Yes. The court can include a variety of different provisions in an Order of Protection depending on the exact situation. Including, but not limited to, that the abuser:

- stay away from the petitioner and any children involved;
- stay away from the home, school, or place of employment of the petitioner and any children involved;
- refrain from committing additional family offenses or acts that endanger the welfare of other family members;
- or refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept, or held by the petitioner or a minor child residing in the household.
- The Respondent may be permitted to remove personal property from a shared residence at a time designated by the court;
- The Respondent may be permitted to visit with any children at court designated times and places;

What is the difference between a Temporary and a Final Order of Protection?

A temporary order of protection is issued during the pendency of the court case. It will last until the next time you are in court or for a temporary amount of time, and can be extended by the judge 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 consents. A final order can last for up to two (2) years. IF the court makes a finding of aggravating circumstances, the judge may issue the final Order of Protection for a period of up to five (5) years.

Where do I file for an Order of Protection?

In Erie County you can go to the Erie County Family Court building located at One Niagara Plaza, Buffalo, New York 14202 to the Fourth Floor at Petition Processing to complete a Family Offense Petition.

You can also go to the Family Justice Center (FJC) located at 237 Main Street, 14th Floor, Buffalo, New York 14203. FJC has many different agencies located at their office to provide services in one place for victims of domestic violence. Service providers include law enforcement, Haven House, Crisis Services, District Attorney's office, Counselors, Nurses, Probation Officers and Social Workers. They can assist you by documenting your injuries through reports and photographs, help you with safety planning. The FJC also offers the option of filing an Order of Protection on site using video-conferencing.

In Niagara County you can go to one of the Niagara County Family Courts located at the Angelo Delsignore Civic Building, 775 Third Street, Niagara Falls, New York 14301 or the Niagara County Courthouse located at 175 Hawley Street, Lockport, New York. In Niagara Falls you can file with the Family Court Clerk on the first floor. In Lockport the Family Court Clerk is on the second floor.

Will my abuser know that I filed for an Order of Protection?

Yes. The will be served with papers and notified to appear before the judge.

Do I have to reveal my home address when I am at the Family Court to file the Family Offense Petition?

If your health or safety or that of your child(ren) would be put at risk by disclosure of your address or other identifying information, you may apply to the Court for an address confidentiality order. When you request at the Petition Processing or Clerk's Office to have your address designated as "confidential", the clerk will give you an "Address Confidentiality Affidavit" which you must complete and sign. If you have questions about the affidavit, the staff will help you. You will be asked for a reason why you believe your address should not be disclosed. You will be required to provide an alternative address that the court can mail you papers to, and that can be used for service purposes.

How much will it cost me to file for an Order of Protection?

There are no filing fees in the Family Court.

Will Neighborhood Legal Services help me get an Order of Protection?

Maybe. If you require assistance filing a petition for an Order of Protection, we may assist you with drafting the petition.

Will I get an attorney in Family Court?

After you file the petition, you will be given a court date. At the court appearance, you should ask the Judge for an assigned counsel referral (if in Erie County) or a referral to the Public Defender's Office (if in Niagara County). If you are in imminent risk of serious harm, you should go to the Family Justice Center or Family Court and file a family offense petition, or seek assistance from a domestic violence agency.

Family Offense Petition forms can be found on the court's website at:

<https://ww2.nycourts.gov/forms/familycourt/familyoffence.shtml>