

# Legal Assistance of Western New York, Inc. ®

Order of Protection

We provide free legal aid to people with civil legal problems in western New York.

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## Order of Protection in New York

### **What is an Order of Protection?**

- An Order of Protection is a court order that tells one person what he/she 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, her home, school and work. ~~That person cannot have any~~ 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 order a person to commit no crimes against the other person or do anything offensive toward the other person.

### **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 [www.nycourts.gov/forms/familycourt/general.shtm](http://www.nycourts.gov/forms/familycourt/general.shtm)

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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.

Last Review Date: January 2018

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Printed: April 23, 2019

<http://www.lawny.org/node/13/order-protection-new-york>

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