

Legal Assistance of Western New York, Inc. ®

Police Response to

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

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Police Response to Domestic Violence

Originally prepared by Jennifer DeCarli, Domestic Violence Legal Coordinator, Empire Justice Center

Updated by LawNY® in 2016

What will happen if I report the domestic violence to the police?

If the police are called to the scene because you are being abused, they must make an arrest if they have probable cause to believe a family offense misdemeanor or a felony has been committed against you. To determine probable cause, police will look at whether or not there is evidence such as bruises, torn clothing, overturned furniture, witnesses to the violence, etc. In addition, the police must make an arrest if a stay away order of protection has been violated or if a family offense has been committed in violation of an order of protection.

The police are not required to make an arrest if there is only probable cause to believe a violation level crime (harassment 2nd or disorderly conduct) was committed. However, if a criminal violation has been committed, the police should inform you of your right to press charges or proceed in Family Court by filing a family offense petition (as long as your relationship meets Family Court's definition of members of the same family or having a close personal relationship).

What should the police do at the scene?

The police are not allowed to ask you if you want your abusive partner or family member arrested. As described above, they must make an arrest in certain situations. However, the police should never ask you if you want your abusive partner arrested. You have the right to request that your abusive partner not be arrested, but the officer should never ask you first.

Every time a police officer responds to the scene of a domestic violence incident, the officer should fill out a domestic incident report which describes what happened and provides a space for you to make a statement and sign the report. You have the right to free copies of this report.

What will happen if my abusive partner claims I started the incident?

If the police arrive at the incident and both you and your abusive partner claim the other person started the incident, the police must attempt to determine who the "primary physical aggressor" was. To do this, the police should compare the extent of the injuries between you and your partner, whether either of you have threatened future harm against the other or another family or household member, whether either of you has a prior history of domestic violence and whether either of you acted defensively to protect yourself from injury. After looking at all of these factors, the police should then arrest who they determine to be the primary physical aggressor.

If my abusive partner is arrested, can I still use Family Court?

If your relationship meets the Family Court's definition for members of the same family or household, you can still proceed in Family Court at the same time your case is going through Criminal Court. You may apply for a temporary order of protection based on the same incident that led to your abusive partner's arrest. This is called concurrent jurisdiction. This would allow you to address issues such as temporary residency, support and visitation at the same time that your case is proceeding through the Criminal Court. Also, because the "standard of proof" is lower in Family court, you may be able to get a permanent order of protection from Family Court, even if the criminal case is withdrawn or dismissed for technical reasons.

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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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