

Domestic Violence Handbook

**New York State Coalition
Against Domestic
Violence**

2004 Edition

Domestic Violence Handbook

New York State

24-Hour Domestic Violence Hotlines:

English	1-800-942-6906
TTY#	1-800-818-0656
Spanish	1-800-942-6908
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This Handbook contains information that will be helpful to victims of domestic violence and others. The information contained in the Handbook is for general information purposes. The NYS Office for the Prevention of Domestic Violence cannot guarantee results or predict outcomes of decisions made based upon information contained in this Handbook.

To order additional copies of this Handbook, you may contact the **New York State Coalition Against Domestic Violence** via the statewide hotline at **1-800-942-6906** or our office number at **518-482-5465**, 9am-5pm, Monday-Friday.

Domestic Violence Handbook

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Introduction

This booklet tells you what you can do if you are threatened or hit by your spouse or partner. It is a self-help guide that explains your legal rights and how to get help from the legal system. This guide also contains ideas to help you put together a safety plan and provides telephone numbers to call if you need shelter, advocacy services, counseling, a support group or if you just need someone to talk to.

No one has a right to frighten, hit or injure you. It is against the law. In fact, there are many laws in New York State designed to protect people who are victims of their partner's or ex-partner's violence. For example, police are required to arrest any person who they have reason to believe committed a felony assault or who has violated the conditions of an *Order of Protection*. Every police officer, peace officer or district attorney who investigates a domestic violence incident must provide the victim with information on shelters and other services in the community. They must also provide, in writing, information on the legal rights and remedies available to the victim. This written information must be available in English and in Spanish.

These laws, and others which this booklet explains, were put in place to help protect YOU.

However, the legal system can be difficult and confusing to use. For a variety of reasons, the legal system can sometimes be intimidating, and may even discourage you from seeking the help you need. Even in the best of circumstances, going to court can take a lot of time, work and patience.

This booklet is intended to help you in two ways. It provides up-to-date information about the legal system in New York State **and** provides a general explanation of your legal rights. It can help you decide **if** you want to use the legal system and **how** to get your rights upheld if you do. Because each case is different, you should consult an attorney or domestic violence advocate for specific information about your case.

What Is Domestic Violence?

Domestic violence is abusive behavior - emotional, psychological, physical, or sexual - that one person in an intimate relationship uses in order to control the other. It takes many different forms and includes behaviors such as threats, name-calling, preventing contact with family or friends, withholding money, actual or threatened physical harm and sexual assault. Stalking can also be a form of domestic violence (for further information on stalking, see page 9.) Most domestic violence is committed against women by their male partners or ex-partners. It also occurs in lesbian and gay relationships and is common in teenage dating relationships. In a small number of cases, men are abused by female partners, but because 91 to 95 percent of all adult domestic violence assaults are perpetrated by men against their female partners, this booklet will refer to victims as female and abusers as male. But every victim of domestic violence, whether female or male, gay or heterosexual, has the right to legal relief.

The following checklist may help you decide if you or someone you know is being abused.

Does your partner:

- constantly criticize you and your abilities as a spouse or partner, parent or employee?
- behave in an over-protective manner or become extremely jealous?
- threaten to hurt you, your children, pets, family members, friends or himself?

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- prevent you from seeing family or friends?
 - get suddenly angry or lose his temper?
 - destroy personal property or throw things around?
 - deny you access to family assets like bank accounts, credit cards, or the car, or control all finances and force you to account for what you spend?
 - withhold medication or deny you access to health care?
 - threaten to reveal your HIV status?
 - force you to work in jobs not of your choosing?
 - use intimidation or manipulation to control you or your children?
 - hit, punch, slap, kick, shove, choke or bite you?
 - deny you access to your immigration documents?
 - prevent you from going where you want to, when you want to, and with whomever you want to?
 - make you have sex when you don't want to or do things sexually that you don't want to do?
 - control your expression of gender identity or sexual orientation?

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- threaten to out you if you are lesbian, gay, bisexual or transsexual?
 - humiliate or embarrass you in front of other people?

If you answered "yes" to any of these questions, you may be a victim of domestic violence. You are not to blame and you are not alone - millions of women are abused by their partners every year. Not all acts of domestic violence are violations of the law. In any case, you do not have to face domestic violence alone. You deserve help, and help is available.

Getting Help From An Advocate

There is no one best way to try to protect yourself from future harm by your abuser. Whether you are working on a safety plan, needing information about your legal options, thinking about going to court, dealing with the police, in the middle of a legal proceeding, needing help from the local Department of Social Services or Human Resources Administration (DSS/HRA), or anything else, you don't have to figure it all out on your own. In making decisions about what is likely to work best for you, it can be helpful to talk to a local domestic violence *advocate*. Advocates understand the criminal justice and Family Court systems and the Department of Social Services system, and they are also familiar with your community. You can also speak to an advocate about your immigration status, and they can provide you with appropriate referrals.

In addition to giving you helpful information, domestic violence advocates can often go with you to court, to the police station or to DSS/HRA to guide you through the process and to offer you practical

and emotional support. While this Handbook is intended to help you understand your legal rights, using the legal system can be a confusing and difficult process. Getting help from someone who has experience working with victims of domestic violence and who knows how to work with the different systems can make things easier for you.

To contact the domestic violence program nearest you, see the **Resource List** in the back of this Handbook.

Safety Planning

Whatever else you may decide to do, one thing that many victims of domestic violence find helpful is making a **safety plan**. You can make one yourself or you can call your local domestic violence program and ask them to help you develop a plan. If you decide to write out a safety plan, be sure to keep it in a place where your partner can't find it. Safety plans can be made for a variety of different situations - for dealing with an emergency such as when a physical assault occurs, for continuing to live with a partner who has been abusive, or for protecting yourself after you have ended a relationship with an abusive partner.

Whether you are with your partner or have ended the relationship and regardless of whether you have used the court system or called the police, there are certain things that are helpful to consider in planning for your future safety.

- Where can you keep important phone numbers (police, hotline, friends, shelter) for yourself and your children?
- Is there anyone you can ask to call the police if they hear suspi-

cious noises coming from your house or apartment?

- If you need to get out of your house or apartment in a hurry, what door, window, elevator or stairwell will you be able to use in order to get out safely?
- If you need a place to stay for a while, where can you go? Can you arrange to stay with family or friends in a crisis? Do you know how to contact the local domestic violence program in order to arrange for emergency shelter?
- Where can you keep your purse, an extra set of car keys or money for public transportation, and some change to make a phone call so that you can grab them quickly?
- Do your children know how to use the telephone to contact the police?
- Is there a code word you can use with friends, family and/or your children to alert them to call for help?
- Can you keep some money, some changes of clothes and important papers hidden somewhere your partner doesn't know about, but that you can get to quickly? Can you keep the "escape bag" with a neighbor or in the trunk of your car?
- If you think you and your partner are about to have an argument, how can you get to a room where there are fewer things that can be used as weapons? How can you avoid getting trapped in the kitchen, bathroom, basement or garage?

Telephone Privacy & Safety

Telephone technologies, such as *Caller ID*, mean you should think about steps you can take to prevent your abuser from knowing who you call or who calls you. In addition, it can help to know how to use these same technologies to help you plan for your safety.

If you live with your abuser, and your telephone has a *Caller ID* box, your abuser can track who has called you. If you live separately from your abuser, you can use *Caller ID* to make sure the caller is someone you want to speak to, before answering the telephone. If you have *Caller ID*, you can also get *Anonymous Call Rejection Service*. This service prevents an incoming call from ringing at your home if the caller has used *Per-Call* or *All-Call Blocking* to stop display of their number on your *Caller ID* box. The caller will reach a recorded message saying that the call will not be accepted unless the block is removed.

Call Return Service (*69) allows you to call back the last number that called you, whether or not you answered the call. In some areas, a recording will give you the number you are attempting to call back, even long distance numbers. However, if the last call you received was from someone you don't want your abuser to know about, you can press *89 after you end the call. This will prevent *Call Return* from working.

The *re-dial* button on your telephone also allows your abuser to call the *last number* you dialed, without knowing the number. Since most domestic violence programs answer their telephone by saying the name of their program, your abuser could learn that you are reaching

out for help. Therefore, *after* hanging up from such a call, you may want to dial the telephone number for weather or some other "safe" number.

Call Trace Service traces the number of an annoying, obscene or harassing call by dialing *57. If your trace is successful, your telephone company will provide the number to the police. You must file a complaint with the police and call your telephone company to request an investigation.

There is a fee for purchasing the *Caller ID* service and a fee for using the *Call Return* and *Call Trace*. More complete information about these and other services is available in the front of your telephone book or by calling your *local* telephone company.

An answering machine is another good way to make sure the caller is someone you want to speak to, before answering the telephone. If your abuser leaves a threatening message on the answering machine, be sure to remove the tape and save it (do not record over it). Such recordings can be used as evidence of threats and stalking.

If you use a cell phone, be aware there are numerous ways an abuser can use cell phone technology to overhear your calls or locate you. Use a cell phone only if you do not have access to a regular phone, and make sure that you do not give any identifying details on a cell phone. If your abuser works for a phone company or law enforcement agency, use extreme precaution, and discuss cell phone safety with a domestic violence advocate.

A cellular phone in "silent mode" or "auto answer" can serve as a

tracking device. Some recent models of cellular phones have GPS (Global Positioning System), which is a location-finding feature. You can check with your phone company to learn if your cell phone has this feature. If you are fleeing from your abuser, either turn off your cell phone or leave it behind.

Computer and E-mail Safety

It is important to remember that computer technology can put your privacy and safety at risk. Computer hard drives are capable of recording every action taken on the computer and Internet, and it is virtually impossible to completely erase these "foot prints". Even if your abuser is not an expert at computers, he may be able to trace what you have done on the computer or can easily find someone who can. If you think you may be monitored on your home computer, it may be safer for you to stop using that computer. Computers that are located in a public library, community technology center, Internet cafe or at a trusted friend's house may be safer options if you wish to use e-mail or browse the Internet.

Other precautions you can take include the following:

- Never share your e-mail password(s). However, if you believe your abuser knows your password, before changing it, consider whether that may cause more danger by arousing suspicion.
- Passwords should be difficult to figure out. Never use birth dates, street addresses, names etc.
- Consider having more than one e-mail account so that you have an alternative if your abuser forces you to close an account.

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- Ask friends and family to not share your new e-mail addresses.
 - Never register your personal information such as your real address or phone number when you sign up for web e-mail accounts such as Yahoo or Hotmail.

Computers can also be a useful tool in accessing information about what you are going through and what you can do to seek help. However, keep in mind that some domestic violence websites are not legitimate and may give you misleading information. Your local domestic violence advocate can help sort out any information that may be confusing. Finally, e-mails from your abuser can provide excellent evidence in a court case. You might want to consider saving his e-mails even if you don't have a case pending, so they are available if you ever need them.

If You Decide To Leave

If you decide to leave, even for a very short period of time, take your children with you if it's at all possible and you can do so without exposing them to harm or risk of harm, and without violating a custody order. Not only can you better ensure the safety of your children if they are with you, having physical custody of your children may help you get temporary or permanent legal custody of your children if you decide to file a custody petition with the court.

If you decide to leave, try to take the following things with you, because it may be difficult to get them later. However, the safety of your children and yourself is always **more** important than any of these

documents or things.

- Orders of Protection
- Custody Orders, paternity documents
- Identification for yourself
- Birth certificates - yours and your children's
- Social Security cards
- Marriage, separation or divorce papers
- School and vaccination records
- Money
- Checkbook, Savings Account Passbooks, Automatic Teller Machine Card, PIN numbers
- Credit Cards and/or account numbers
- Keys - house, car, office, post office box, safety deposit box
- Driver's license, car registration and title
- Medications and prescriptions
- Public Assistance Benefit Identification Card
- Passport, green card, work permit and any other immigration documents
- Several changes of clothes

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- Children's favorite toys, security blankets
 - Lease/rental agreement, house deed
 - Mortgage payment book, current unpaid bills
 - Insurance papers
 - Address book
 - Pictures, jewelry, items of sentimental value
 - Pictures of injuries you may have gotten from your abuser
 - Any evidence that might help police investigating your case, such as threatening letters or phone message tapes

Make copies of important documents and keys and find a safe place to keep them in case you decide to leave. A safe place can include a hiding place in your home or with a friend, neighbor or family member that you trust.

Stalking

Stalking occurs when your batterer, or anyone, intentionally and repeatedly does things that cause you to fear for your safety, the safety of an immediate family member or someone you know, or your property. If he causes harm to your mental or emotional health, he may also be guilty of stalking if he has been previously warned to stop his behavior.

Stalking is a criminal offense that requires a pattern of repeated acts. Individual acts within the pattern do not have to be criminal offenses. When a pattern of non-criminal behavior is directed at a particular person, it becomes the criminal act of stalking. Stalking can also consist of a criminal act like assault in addition to an otherwise non-criminal act like sending you flowers. Examples of stalking behavior may include:

- unwanted phone calls, letters, gifts, flowers, email or faxes;
- following you or showing up at the places that you frequent (such as home, work, school, etc.);
- verbal, written or implied threats directed at you, an immediate family member or someone you know;
- acts that cause you to fear that your business, employment or career are threatened;
- vandalism of property that belongs to you, an immediate family member or someone you know;
- actual assaults or other acts of violence directed at you, an immediate family member or someone you know, including sexual assault.

These are only a few examples of stalking behavior. Any repeated unwanted contact, harassment or violent act directed at you, an immediate family member or someone you know may be stalking.

You should keep track of all acts of stalking. Even if your batterer is being prosecuted for other crimes, he can also be charged with stalking since it is separate and distinct from other criminal acts like assault or harassment.

Stalking can be extremely dangerous so you should talk to your local domestic violence program about specific steps you can take to protect yourself.

What The Police Can Do For You

What the police can do for you depends in part on what you tell them or give them, and on what other people are willing or able to tell them. Officers investigating your case should talk to you **privately**, and they should also interview children, other family members, and neighbors who might have seen or heard what happened. Among other things, officers will be looking for:

- evidence of harm or injury to you or your children (for example, cuts, bruises, swelling or torn clothing);
- damage to furniture, walls, windows, your car or other personal property;
- signs of a break-in; and
- threatening messages on your answering machine, or letters or written messages containing threats.

If you call the police, they **must** come to investigate your complaint. The police should talk to you and the abuser separately and, if possi-

ble, should talk with you out of your abuser's sight and hearing. In order for the police to make a decision to arrest, they need to have what is called *probable cause* that a crime was committed. That means that they must have enough evidence to believe that the person committed a crime by harming or threatening you. This evidence can be a combination of things - any injuries you may have, your statement of what happened, taped 911 calls or emergency calls to police, damaged property, torn clothes or any statements of neighbors, children or other family members.

Police officers are required to complete a *Domestic Incident Report (DIR)* form whenever they respond to a domestic disturbance call. This form is to be completed regardless of whether or not the police make an arrest. The report will contain your statement about what happened before the police arrived. **What you say counts as evidence**, so the statement you give to the police is very important. Read your statement carefully and if there is anything in it that is incorrect, don't sign it. Ask the officers to change the written statement so that it matches what actually happened. Sign it only when it says what you want it to say.

The police are required to give you a copy of this report before leaving the scene, so be sure to get one. You can ask to add to it later if you remember something you forgot to tell them, and you can add photographs of bruises and copies of medical reports, if you get them. The police should also give you a *Victim Notification Form* that tells you what your legal rights are and includes information on domestic violence services in your community. They should have copies of the form in both English and Spanish.

If, for some reason, the police officer does not complete a Domestic Incident Report, politely ask the officer for his or her name and write it down. Tell them that you are asking so that you will be able to contact them again if you have questions. It is a good idea to contact a domestic violence advocate and tell them that you did not receive a Domestic Incident Report from the police, and identify the officer who did not complete the report.

If the police find that your abuser committed a *felony* against you, they **must** make an arrest. Felonies are the most serious crimes that can be charged. An example of a felony in a domestic violence case would be Assault in the Second Degree, a charge that could be made if the assault resulted in serious physical injury, like a broken bone or a wound from a weapon, and created substantial pain that lasted over a period of time. Usually, the injuries from a felony level assault require medical attention and/or hospital care.

If the police find that a *Family Offense misdemeanor* has been committed against you, they are required to make an arrest, **unless** you ask them not to arrest. State law prohibits the police from asking you whether you want them to make an arrest. Even if you ask that an arrest **not** be made, many police departments will still make an arrest if they have evidence of a crime. An example of a Family Offense misdemeanor is Assault in the Third Degree, a charge that could be made if the assault resulted in an injury (more than a bruise) that impairs your physical condition (this does not have to be a permanent impairment; for example, a cut by the eye that requires an eye patch or causes extreme swelling around the eye impairs your ability to see) **or** causes substantial pain. The law can be vague about many definitions; it is important to be very specific about the nature of your inju-

ries and the pain you are experiencing. Another example of a Family Offense misdemeanor is Aggravated Harassment, which is when you are threatened or harassed over the telephone or by mail.

Many domestic violence cases involve *violations* (also called “petty offenses”), such as Harassment in the Second Degree. Harassment is when your abuser verbally threatens you with harm, slaps you or pushes you, but doesn't cause an injury. The police must see this happen in order to make an arrest unless you decide to make the complaint yourself, which is called making a *civilian arrest*. In many areas, the police will help you with this and will actually take your abuser to the police station. In some areas, in violation cases, the police will give you information on how to get the court to take some action against him, but will not take your abuser into custody.

The following is a complete list of Family Offense crimes:

- disorderly conduct
- harassment in the 2nd degree
- aggravated harassment in the 2nd degree
- harassment in the 1st degree
- menacing in the 2nd degree
- menacing in the 3rd degree
- reckless endangerment
- stalking in the 4th degree
- stalking in the 3rd degree
- stalking in the 2nd degree
- stalking in the 1st degree
- attempted assault
- assault in the 3rd degree
- assault in the 2nd degree

If this is not the first time your abuser has threatened you with harm or pushed or shoved you, or if you are afraid of future harm, **be sure to tell the police**. If your abuser has harassed or threatened you more than once, this may give the police the evidence they need to

charge Harassment in the First Degree or Menacing, which are misdemeanors. This allows them to make the arrest and take your abuser into custody without you having to make a civilian arrest. If the police have reason to believe an abuser violated a “stay away” provision of an Order of Protection, they must arrest him.

If you are not satisfied with the way an officer is handling the situation or treating you, try to stay calm and ask to talk to a supervisor. If you've asked the police to make an arrest and they decide not to make one, make sure they've provided their reasons in the Domestic Incident Report. If you get stuck, call a domestic violence program and ask them for help in trying to get the police to respond differently. Even if the police say they can't help you, it may be possible to bring criminal charges by going directly to the District Attorney or to the judge. If you need to do this, it's a good idea to get a domestic violence program advocate or an attorney to help you. (See *Getting Help From An Advocate* and *How To Find An Attorney*.)

If the police do not make an immediate arrest **and** if you are afraid for your immediate safety and the safety of your children, tell the police that you need them to take you to a safe place. At a minimum, the police should transport you and your children to the police station where you can call a domestic violence program or a family member or friend to help you find a safe place to go.

If The Abuser Is Arrested

See *Criminal Law* section.

If You Are Arrested

If the police have reason to believe that both you and your abuser committed a Family Offense misdemeanor, they may decide to arrest both of you. Before the police can make that decision, they are required by law to determine who is the "primary physical aggressor." This means police must investigate who is truly the victim and who is truly the abuser. The police cannot arrest both you and your abuser simply because both of you file a complaint.

The purpose of this policy is to protect victims of domestic violence when their abusers file a cross-complaint against them or when victims fight back in self-defense. The primary physical aggressor is not necessarily the person who was first to use force during the incident. To determine the primary physical aggressor, the police are required to:

- compare the injuries inflicted on both parties;
- determine whether any threats were made;
- investigate whether one party has a prior history of committing domestic violence; and
- consider whether one party acted in self-defense.

If you are arrested, you should speak with an attorney (one that you hire or one that is appointed for you) before answering any more questions the police may ask. Tell your attorney that you are a victim of domestic violence and describe the events leading up to the arrest.

If you acted in self-defense or your abuser threatened you or has a history of committing domestic violence, that information should be given to the attorney as well. It is also a good idea to contact a local domestic violence program to speak with an advocate.

If No Arrest Is Made

Even if no arrest is made when the police respond to an incident, they can still help you get medical care, help you and your children get to a safe place, and take a statement to document the incident. Hospital records, photographs of your injuries or any damaged property, a doctor's statement and/or a statement to the police can all be useful documentation of abuse if you decide to call the police again or decide at a later time to go to court.

Criminal Court And Civil Court

There are two types of courts that are available to provide protection to victims of domestic violence - criminal and civil. Family Court is a civil court with the goal of protecting you and your family. Only people who are legally married to, divorced from, or otherwise related by blood or marriage to their abuser, or people who have a child in common with their abuser, can go to Family Court. If you are eligible to go to Family Court, you have the option of going to Family Court or criminal court, or both at the same time. Supreme Court is also a civil court, used in cases of legal separation or divorce. You can apply for an *Order of Protection* in any of these courts, but each works differently, and understanding the differences can help you decide what is best for your situation.

Why Orders Of Protection Can Be Helpful

While an Order of Protection cannot guarantee your safety, it can help in several ways.

- Police are likely to take your calls more seriously if you have an Order of Protection. An abuser can be arrested and put in jail if he violates an Order of Protection.
- If the police have reason to believe an abuser violated a “stay away” provision of an Order of Protection, they must arrest him.
- If an abuser is convicted of violating an Order of Protection and has violated one in the past, even against a different victim, he can be charged with Criminal Contempt in the First Degree, which is a felony.
- If an abuser violates an Order of Protection by causing physical injury or property damage over \$250, he can be charged with a felony.
- If you have left your home, an Order of Protection can make it easier for you to get the police to go with you to get your personal belongings.
- If you are being stalked or harassed at work, an Order of Protection can protect you at your job.

Specifically, criminal, Supreme and Family Court Orders of Protection can:

- direct the abuser to stop the abusive behavior toward both you and your children;

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- tell the abuser to leave and stay away from your home, your job, and your family;
 - direct the abuser to have no contact with you - meaning no phone calls, email, letters or messages through other people; and
 - order the abuser to stay away from the children, their baby-sitter, day care or schools.

Family Court Orders can also do other things. See *Family Court, Getting the Evidence Together*.

Orders of Protection can also order the suspension or revocation of a license to carry or possess a gun, rifle or any type of firearm. If your abuser has access to such weapons, it is important that you tell the judge and ask that these weapons, and the gun permits, be taken away from your abuser. If your abuser carries a weapon for his job (such as a police officer or a corrections officer) and if he has ever used that gun to threaten you, it is especially important that you report that to the judge.

In general, an Order of Protection from Family or criminal court is in effect for two to five years. While Orders of Protection can be helpful, they cannot guarantee that your partner will stop being abusive or violent. Some abusers choose not to obey them and the Orders have to be enforced. You may have to call police for help, and you may have to go back to court. This should not discourage you from using the law to help make you safe. Know your rights. You are the best

judge of whether getting an Order of Protection will be helpful in your situation. Members of abused women's support groups and domestic violence advocates can help you decide whether getting an Order of Protection is a good strategy for you. Your local domestic violence program can also provide help and information if you need assistance in getting an Order of Protection or in having an existing Order enforced. See *Enforcing An Order of Protection*.

Whichever court you choose to use, it is important to remember that you have a right to keep your address confidential. If you have moved to a new, safe location or if you are staying in a domestic violence shelter, you do not have to give the judge or the court your address. They routinely ask for this information, so you will have to say that you are afraid to let your abuser know where you are now living.

Mutual Orders Of Protection

A judge may encourage you to agree to a *mutual Order of Protection* (also known as *Orders by consent*) since it seems like a quick and easy way to settle a case. This means that the judge would issue an Order of Protection against *you*, in addition to the Order of Protection against your abuser. If you accept the Order, you may be arrested for violating it at a later date. For example, if you call your abuser, *you* would be in violation of the Order and the police may arrest *you*. It is actually against the law for a judge to grant a *mutual Order of Protection* unless your abuser has petitioned for such an Order and the judge has made a finding on the record regarding the need for such an Order. This can be a very confusing issue and if you have questions, you should talk to a domestic violence advocate or an attorney before agreeing to such an Order.

Which Courts You Can Go To

You may go to ► If you are ▼	Family Court	Criminal Court	Supreme Court
		Criminal prosecution is necessary to get an Order of Protection	If there is an ongoing divorce or separation proceeding
Legally married to abuser	■	■	■
Divorced from abuser/ no children	■	■	■
Divorced from abuser/ with children	■	■	■ and you have a custody or visitation order
Never legally married to abuser/with children	■	■	
Never legally married to abuser/no child(ren)		■	

Criminal Law: Going To Criminal Court

Under criminal law, an abuser may be punished by the criminal justice system for injuring you, threatening to injure you, or committing some other offense like damaging your property. He could go to jail, be fined, or both. If the police respond to a complaint, do an investigation, and have *probable cause* that an offense has been committed, in most cases they will arrest the abuser (see *What the Police Can Do For You*). Otherwise, you will need to go to the police department to file a complaint and the police may then arrest the abuser for his criminal acts against you. In either case, the police and the courts will refer to you, the victim, as the *complainant*. The *prosecutor* or *District Attorney* will decide if the case should go to criminal court. If the decision is yes, then he or she will decide what will happen in the case and will do the work necessary to actually bring it to court. Because the District Attorney's office controls the case, they may try to have the abuser punished for his crimes even if you ask them not to. If you believe that the prosecutor's decision to go forward with the case may place you in more danger, it is important that you speak with a domestic violence advocate to work out a safety plan.

You should know that if your abuser is arrested, he may be kept in jail only overnight or for just a few hours, so having a safety plan and putting it into action is a good idea (see *Safety Planning*). If there is an arrest, your abuser will be charged formally at an *arraignment*, where the judge may set *bail* or allow some kind of *conditional release*. If you are present at the arraignment, you can request a *Temporary Order of Protection* if you don't already have one. You can also ask the police to put your request for a Temporary Order of Protection in their police report. It is important to tell the officer if the abuser has access to weapons such as a gun, rifle or other firearms. It is up to the judge, however, to decide whether a Temporary Order of Protec-

tion is given to you, or whether the weapons and permits are to be removed. If you do get one, it is *temporary* - it will be in effect only from the time your abuser is served with the Order until the court decides the case. If you want a final Order of Protection, you need to appear on the trial date set by the court and specifically ask for one. A final Order of Protection is sometimes called a *permanent* Order. However, this is misleading since all Orders contain some time limit.

As the complainant, your main role in a criminal case is to come to court to *testify* - to tell the court how the abuser has harmed you. The District Attorney makes the decision about whether or not you will have to testify. You may not have to testify in order for your abuser to be convicted, but you need to be prepared to do so if necessary. Although many cases never go to a full trial, you need to be ready. The prosecutor's job is to make the case against your abuser. Your job is to tell the truth about what happened. In most courts, you will be allowed to have an advocate with you at every step of the process, to help you understand what's happening and to give you emotional support. An advocate can also help you speak up if you are uncomfortable or if somebody is not understanding something that you think is important.

It is important to appear at court on scheduled court dates because if you don't, the prosecutor may not have enough evidence to go forward and the case may be dismissed. Call the court clerk or the prosecutor yourself to make sure you know when the next appearance is scheduled. Don't wait for them to call you. An advocate can help you with this, but it's a good idea to be aware of the proceedings yourself. If your abuser threatens you in order to get you to not testify, tell the prosecutor. If necessary, a domestic violence advocate

can help you communicate with the prosecutor assigned to your case.

You can help the prosecutor build a strong case by giving her or him other evidence to prove that you were assaulted or harmed in some other way. This evidence can include photographs of injuries, medical records, and the names of any other people who know or saw what happened.

Also see under *Family Court, Getting The Evidence Together*.

If you want an Order of Protection, you must appear in court and specifically ask for a *final Order*. This is necessary even if your abuser is going to plead guilty or if the prosecutor has agreed to some sort of conditional disposition. Don't assume that the prosecutor will take care of this for you, be sure to let the prosecutor know that you want an Order issued. As with all Orders, the judge decides whether or not to issue an Order of Protection.

Expect that there will be delays and that you will have to make several court appearances. You may be asked to review your statement with investigators and with the prosecutor. There may be one or more preliminary hearings in the case, and if there is a felony charge, you may need to testify before a grand jury. If some kind of guilty plea is entered or if your abuser is found guilty at a trial, someone from the *Probation Department* may speak to you as part of a pre-sentencing investigation.

Even if your abuser is found guilty in a criminal court proceeding, he will not necessarily go to jail. In fact, it's rare for abusers to spend any length of time in jail. If your abuser has never been convicted of

an assault crime before - and sometimes even if there are other misdemeanor convictions on the record - the court may decide to *adjourn in contemplation of dismissal* (sometimes called "ACOD" or "ACD"). This means that if your abuser does not commit another offense within a stated period of time (usually six months to one year), the court will dismiss the charge entirely and wipe the criminal record clean.

There are some advantages to going to criminal court:

- You do not have to pay for legal representation because a prosecutor will bring the case to court.
- A criminal case makes it clear to an abuser that his actions against you are crimes and that he will be held accountable for his actions.
- Even if your abuser is found guilty and is not ordered to spend time in jail, he may be put on *probation*, which means that he will have to report to the court every month and that his behavior will be monitored by a *probation officer*. The conditions of his probation may include staying away from you and not hurting or threatening you. If he violates the conditions of his probation, he may end up spending time in jail.
- If your abuser is convicted of a felony, the judge can give you an Order of Protection that lasts for up to five years.

But criminal prosecution also has some disadvantages:

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- Criminal cases require more proof of what happened than civil court cases. The court will usually need other evidence, besides your word, that your abuser committed a crime against you.
 - It can take a long time before the court decides the case.
 - If the judge decides to adjourn the case in contemplation of dismissal (ACOD/ACD), you will probably be able to get an Order of Protection that is in effect only until the case is dismissed (usually six months to one year later), although you can request an extension from the court. To get an Order extended, however, you will need to convince the court that you are still at risk of harm from your abuser.
 - It is up to the District Attorney, not up to you, whether or not the case will be prosecuted.

Civil Law: Going To Family Court

Many victims of domestic violence have the option of going to Family Court, which is a civil court, to get a Family Court Order of Protection. Two things determine your eligibility to go to Family Court - your relationship to the abuser and the type of offense that has been committed against you. If you are legally married, legally separated or divorced from your abuser, related to your abuser by blood or marriage, or if your abuser is the parent of one or more of your children, even if you are not and have never been married to your abuser, then you can seek relief from Family Court. If you are in a gay or lesbian relationship, or if you are unmarried and pregnant with your abuser's

child, but have no other children with him, you cannot go to Family Court.

If your relationship to your abuser makes you eligible, then you can seek relief from Family Court if the offense committed against you is a *Family Offense*. A Family Offense could be one or more of the different acts that are defined under the law as Harassment, First and Second Degree Aggravated Harassment, Second and Third Degree Assault, and Menacing, as well as Disorderly Conduct, Attempted Assault, and Reckless Endangerment. If the offense committed against you is not a Family Offense, you must go to criminal court to have your complaint heard. Even when Family Court can take your petition, the judge can choose to transfer your case to criminal court if he or she decides the offense is so serious that it is better handled in criminal court. Most acts of domestic violence are also Family Offenses. It can be very complicated to understand what specific kinds of acts are included in all the different categories of offenses. The most important point to know is that if you bring a complaint to Family Court and it is not a Family Offense, you will be referred to the criminal court. If you are confused about whether or not you can take your case to Family Court, you can call a domestic violence advocate or the court itself for help.

There are some advantages to going to Family Court:

- It is often easier to get a Temporary Order of Protection from Family Court. A judge can give you an Order within a few hours if it is an emergency.
- An Order of Protection from Family Court can do a lot more than

order the abuser not to harm you. As in criminal court, a Family Court Order can order the abuser to move out of your home, order him to stay away from your workplace, school or home, order him not to call you on the telephone, and order him to pay restitution. In addition, an Order of Protection from Family Court can give you temporary custody of your children, require the abuser to pay child support, and establish rules for the use of certain personal property, including the family car. An Order from Family Court can also establish visitation arrangements so that you do not have to see your abuser when he spends time with the children.

- You don't need as much evidence to prove your case in Family Court as you need in criminal court. While it is always helpful to bring evidence such as photographs of injuries, police reports, or medical records, if the judge believes what you say even slightly more than what your abuser says, you will probably get an Order of Protection.
- An Order of Protection from Family Court can last from two to five years, and you can ask for it to be extended when it expires.

There are some disadvantages to using the Family Court:

- The burden of dealing with the legal system is on you, not on a prosecutor. In order for your case to proceed, you are the one who must go to court and tell your story to a judge. There is paperwork to complete and you may have to spend a lot of time waiting when you go to file your petition and when you return to Family Court for your court appearance. You can have a lawyer

advise you and speak for you in court, but you may need to pay for this representation because free legal services can be difficult to get if you have a job or receive some income.

- A Family Court judge cannot put your abuser in jail even if the abuser admits that he did the things you described in your petition. A Family Court judge can only order an abuser to jail if he violates an existing Order of Protection.

You have the option of going to Family Court with an advocate, with a lawyer or on your own. If you cannot afford an attorney, but you'd like one, you may be legally entitled to one depending on your income. If you believe you are entitled to one but the court is not providing one for you, an advocate from a domestic violence program may be able to assist you in getting a lawyer through the courts. You may be able to obtain free or low cost legal services from legal clinics in your community or operated by a nearby law school, or be referred to an attorney by your local bar association.

If you want, you can go to court on your own without a lawyer. This is called *pro se* (pronounced "pro say") and means "for oneself." Although you will have to speak for yourself to the judge, this does not mean that you have to do this all alone. There are people, such as domestic violence program advocates, who can guide you through the steps you need to take.

Custody & Visitation

Family Court is the court you must use if you are seeking custody of children you have in common with your abuser. You can petition for custody of the children at the same time you complete your petition

for an Order of Protection. You may also request *temporary custody* of your children, so that you may have custody of them while you wait for your court date. It is very important to request temporary custody of your children if you are asking that the abuser be removed from the home and/or you are afraid that your abuser may run off with the children. Without a temporary custody Order, it can be very difficult to bring your abuser and children back to the court in your county. If you do fear that your abuser will take the children away, it is very important to state this in your petition. Unless your abuser has caused serious physical injury to your children, it is likely that he will be granted visitation rights. You may, however, request that someone that you trust supervise this visitation.

Abusers commonly use visitation time as an opportunity to threaten or intimidate their victims. Therefore, whether or not the visitation is supervised, it may be good to have the Order state that visitation pick-ups and drop-offs happen someplace other than your home. A public place, like the lobby of your local police station, is an example of a safe place to exchange the children.

Custody disputes generally take a long time to be resolved. However, the temporary custody Order stays in effect until the final custody Order has been granted. Family Court judges must *consider* domestic violence when making custody decisions, but this does not guarantee that you will get custody of your children.

It is very important that you keep a log to record any visitation your abuser misses. Also, if your abuser makes any threats to you or to your children, report it to Family Court so the judge is aware of the threats.

How To Find An Attorney

If you are ineligible for a court appointed attorney, and you are able to hire an attorney, these are some questions you should ask before you decide whether or not to hire him or her:

- How much do you charge by the hour? For a first meeting or consultation?
- What is your minimum fee for my kind of case?
- What is covered by your fee?
- How many court appearances are included?
- What is your rate for appearance in court?
- Do you have a written agreement that I can sign and a copy of it for me to keep?
- Are you willing to help me get necessary court Orders, such as custody, visitation and/or protective Orders?
- Will you seek changes in final Orders and judgments if new circumstances justify the changes?
- Are you willing to assist me if my abuser violates a custody or protective Order? What are your fees in those circumstances?
- Do you charge for time spent when I telephone you or when you respond to letters I send?

Also ask:

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- Are you willing to talk and coordinate with a domestic violence advocate?
 - What should I do to help you with my case?
 - What do you expect of me?
 - What papers, documents and witnesses should I get for you?
 - What do you think are my chances for success in court?

From the very beginning you should feel comfortable when you talk to your lawyer and be sure that she or he understands your situation and knows how to help. If you do not have confidence in the first lawyer you speak with, you have every right to go to another one. Your local domestic violence program may be able to refer you to a lawyer.

Writing Your Petition

When you ask for an Order of Protection, you have to fill out a *Family Offense Petition*, describing how your abuser harmed you. Your lawyer, if you have one, can prepare the petition. A domestic violence advocate can also work with you to prepare the petition. In some counties, the Probation Department will help you with your petition and bring it before the Family Court judge. If you do not have an advocate or a lawyer and are not receiving assistance from the Probation Department, the clerk of the court can be very helpful in explaining how to fill out your petition and other forms you may have to complete. The clerk is the court's administrator. He or she is in charge of handling the petition for an Order of Protection and scheduling your

hearing in court.

In filling out the petition, you should give the facts simply and clearly. You don't need to explain every action that led up to the abuse, but you should state in detail what the abuser did and when and where he did it.

Here's an example...

"On May 1, 1998, at our apartment, John hit me in the face with his closed fist at least three times. The last punch knocked me over and I hit my head on the kitchen counter. My lip was cut and bleeding and I had to go to the emergency room to get six stitches. He said if I told anyone he would kill me."

You don't have to write a lot, but if you have been abused at other times, or if your children have been hurt or threatened, include those facts too. If you have ever called the police to report violence against you or to ask them to protect you, it is important to include that information as well. Be as complete as possible, giving information on all past incidents. Only the information included in the petition for your Temporary Order of Protection will be considered for the final Order of Protection.

Once you have completed the petition, you will have to make it official by signing it in front of a notary public. Someone in the clerk's office will be a notary public. You will need to bring an identification card with a picture on it to show the notary public as proof of who you are.

If you request a Temporary Order of Protection, the Family Court

judge is required to make a decision about your petition the same day or the following business day. He or she may ask you questions about the events you describe in the petition. Make as strong a case as you can, but keep your answers brief and stick to the facts. The judge will then decide whether or not to issue you a Temporary Order of Protection. If you receive one, the court will arrange to serve the abuser with the Order and a copy of your petition. When the abuser sees the petition, he will know exactly what you have said was done to you. A Temporary Order of Protection is in effect from the time the abuser is served with the papers until the court makes a final decision regarding your petition.

Whether or not you request or receive a Temporary Order of Protection, a hearing will be scheduled within a few weeks of filing your petition. Both you and your abuser must appear before the judge at that time. If you want to get a final Order of Protection, you must appear at the hearing.

Family Court is open each weekday from 9 a.m. to 5 p.m. In some areas, Family Court may also have additional evening hours. You can call the Family Court in your county to find out if there are evening hours. When Family Court is closed (weekends, evenings and holidays), you may be able to obtain a Family Court Temporary Order of Protection through criminal court; this includes city, town and village justice courts. A Family Court Temporary Order of Protection issued by criminal court only lasts until the next business day. You must then return to Family Court to have the Order extended.

Getting The Evidence Together

You should bring to court whatever and whomever you can as evi-

dence to help you show that the violence took place. Maybe a neighbor, a friend or relative heard you call for help or saw that you were bleeding or bruised. If you have medical records from a doctor or hospital that treated your injuries, you should bring them. A police report can also be important evidence.

One of the strongest pieces of evidence you can have is photos of yourself that show bruises or other visible injuries. In some areas, the police carry Polaroid cameras and will take a picture of your injuries, or someone working in an emergency room can take a picture. It's a good idea to have pictures taken again a few days after a physical assault as it sometimes takes a while for bruises to show up. If possible, it is best to get film that has a date on it. If you don't have a camera, you can ask a domestic violence advocate to take pictures for you.

While witnesses and physical evidence strengthen your case, the most important evidence is what you tell the judge. Going over what you plan to say ahead of time and writing it down is a good way to prepare. Make a list of things you would like the court to do for you and specifically ask the judge to include those things in the Order of Protection. The list should include things you need to help you be safe. Among other things, the judge can:

- order the abuser to leave you alone and not threaten, harass, injure, or intimidate you or your children;
- order the abuser to leave your family home and stay away from your job, your family and friends;
- direct the abuser to have no contact with you - meaning no

phone calls, letters, flowers, gifts or messages through other people;

- order the abuser to stay away from the children, their baby-sitter, day care or schools;
- require the police to accompany you into your home to retrieve personal belongings;
- decide issues related to custody, visitation and child support;
- order your abuser to pay for expenses related to the abuse such as medical care, property damage, etc.; and
- decide issues related to dividing up certain kinds of personal property.

The judge can also order your abuser to go to a batterer's education program and/or to an alcohol or drug treatment program. However, even if he stops drinking or using drugs or goes to a batterer's program, it doesn't necessarily mean that the abuse will stop. Even if he agrees to get help, you may still want to have an Order of Protection in case he doesn't keep his agreement or he disobeys the law.

Be prepared to explain why you need each type of relief you are requesting. If you are asking that your abuser pay for your expenses, bring bills, receipts or other proof to show what these expenses were. **YOU MUST APPEAR IN COURT ON THE DATE SET FOR THE HEARING.** The judge cannot issue an Order of Protection unless you are there. If you don't show up, he or she may dismiss the case and you would have to start all over again. If there is a reason you can't

come to court on the hearing date, call the clerk right away to ask for a *continuance* and explain why you need it. The hearing will be set for another date.

What To Expect In Court

YOU HAVE A RIGHT TO BE SAFE IN THE COURTHOUSE AND THE COURTROOM. Your abuser may try to threaten or scare you in the courthouse. He may also try to stop the case by telling you he is sorry about the abuse and promising not to hurt you anymore. Even if you think that you may get back together, having an Order of Protection may prevent more violence in the future. If he promises to stop the abuse, it is always better to have the judge hear the promise; this could be done by your abuser agreeing to an Order of Protection.

You have a right to an interpreter if you feel you will not be able to fully understand the proceedings in English. It is the court's responsibility to locate an appropriate interpreter. A friend or member of either you or your abuser's family would not be appropriate to interpret. It is never appropriate to use children for this service. Contact a domestic violence advocate if the court does not provide you this service.

You do not have to speak with or sit near your abuser, his family or his friends. If he tries to intimidate you or you are pressured in any way, go immediately to a guard, clerk or anyone else who works there and ask for help. Family Court is now open to the public, so your abuser may bring his family and friends with him into the courtroom when you speak with the judge. You can petition the court to close the courtroom to outside parties, but such a request may be denied unless there are special circumstances that might disrupt the proceedings.

If the abuser does not come to the hearing, your case will be adjourned and you will be given a new court date. You can ask the judge to issue a warrant for his arrest. If you have a Temporary Order of Protection, you may also need to ask for it to be extended until the next court date.

Talking To The Judge

Before you testify, you will be asked to swear that you will tell the truth. Everyone else who testifies, including your abuser, will also be sworn in. Everyone in the courtroom is expected to treat the judge with special respect, so always call the judge "Your Honor" and don't interrupt when the judge is talking. Speak only when the judge asks you to speak. If the judge interrupts you to ask you a question, stop speaking right away. If you don't understand a question, politely say so. If you can answer a questions with "Yes, Your Honor" or "No, Your Honor" that's all you need to say. If you have to explain something, try to give just the facts and to be brief. Speak slowly, look directly at the judge and tell what happened, but keep it simple. If you practice your testimony ahead of time, it will be easier to talk in court even if you are nervous.

A judge often has to deal with many cases in a day, so he or she may seem to be in a hurry. Sometimes, it can seem as if a judge is angry or irritated. Try not to let this bother you, remain calm and follow the suggestions above. After you have told your story, your abuser (or his lawyer, if he has one) has the right to give his side of what happened. This may include asking you questions to try to discredit what you have just told the judge. This is called cross-examination. This may be upsetting to you, but it is important to stay calm and to not get into an argument with your abuser. Do not say anything until the judge

asks you to speak again or tells you to answer the questions. If your abuser lies, when it is your turn to talk, simply tell the court that what your abuser said was not truthful.

You should make sure that the judge knows about any threats your abuser has made to stop you from going to court. These may include threats to take or harm your children, to withhold money for support, or threats against your friends or family. You should also tell the judge if your abuser has been harassing you in other ways, such as calling or appearing at your workplace.

Using Both Criminal And Civil Court

If you are eligible to use the Family Court, then you also have the right to use **both** the Family and criminal courts as sources of legal relief and protection at different times or at the same time. For example, you can cooperate with the prosecutor's office in trying to have your abuser convicted of a crime, have an Order of Protection from criminal court and, at the same time, file for an Order of Protection in Family Court as a way to get issues like custody, visitation and child support decided very quickly.

Planning For Your Time In Court

If you are going to Family Court, you will probably have to wait in the courthouse before your case comes up, so you should plan to spend most of the day there. Some Family Courts have childcare services. Try to find out before you go to court. If they do not have child care services, try to leave your children with someone, or arrange for someone to take them to and from school. Sitting around the courthouse for several hours will be hard for them and having them at the

hearing could be stressful for all of you.

If you are going to your local criminal court, these courts do not have childcare services and they tend to be rather crowded and hectic. Whenever possible, you should try to find someone who can take care of your children while you are in court. The prosecutor may not have much time to talk to you in the courtroom. Therefore, you should try to call ahead of time and let the prosecutor know what you would like to have happen in court.

Whether you decide to use Family Court and/or criminal court, both courts can require a great deal of your time. If you are employed, New York State law requires an employer to allow time off for you to go to Family Court or criminal court hearings or to consult with the District Attorney. You must give your employer at least one day's notice of your need for time off. If your employer attempts to penalize you for taking this time off, contact your local domestic violence program or the local office of the Department of Labor.

Whichever court you use, it is understandable that you may be anxious about going to court. If you have questions about what is going to happen, contact your local domestic violence program. The more notice you give your local program, the more likely it is that they will be able to have an advocate accompany you to court.

Your physical appearance can make a difference in how a judge perceives you. You should try to dress as if you were going to work in an office.

Supreme Court

If you are in the process of getting a divorce, separation or annulment, you can request an Order of Protection from the Supreme Court at any time before the trial or settlement is final. Discuss your need for an Order of Protection with your lawyer. An advantage to having an Order of Protection from Supreme Court is that when it is attached to a divorce Order, the Order of Protection is valid for the duration of the divorce. However, having changes made to a Supreme Court Order of Protection can be very time consuming and costly. If you need the Order of Protection to be modified in the future, it is important to request that it can be done in Family Court.

After You Get An Order Of Protection

Whether your Order is from Family, criminal or Supreme Court, once the Order is issued, the clerk will give you a *certified copy* of it. This is your official record of the court Order. Family Offense Orders of Protection are listed in a statewide registry that can be accessed by law enforcement personnel and the courts, and should be enforced whether or not you have the Order of Protection with you. However, it's best to keep the certified copy with you at all times. You should also make copies of the Order to leave at your job or at your children's school or day care center, if the abuser is ordered to stay away from these places or if you have been awarded custody. You should also give a copy of the Order of Protection to your local police department and to the police department in communities where you work or regularly visit. It's a good idea to make a copy of the Order and any other documents and keep them in a safe place. If you lose your copy or your abuser destroys it, the court can give you another certified copy of your Order of Protection, either free or for a small

fee.

Enforcing An Order Of Protection

If your abuser violates any part of the Order, he is in *Contempt of Court* for failing to obey an Order of the court. Violation of an Order of Protection is a crime and a judge should take this very seriously. If your abuser is not charged with a violation of an Order of Protection or criminal contempt, you can contact a domestic violence advocate at your local program to assist you in having charges brought against him. A person who violates an Order of Protection can be punished by being sent to jail, paying a fine of several hundred dollars, or both. Although you can get an Order of Protection in both criminal and Family Court, the abuser cannot be held accountable by both courts for the same violation – this is called double jeopardy and is unconstitutional. You can contact a domestic violence advocate to help you determine how to proceed when the abuser violates the Order.

If your abuser does something to hurt or threaten you, call the police. Once you have an Order of Protection, the police have to make an arrest if they believe the Order has been violated or an offense has been committed. You should show them the Order when they answer your call. If the police do not have enough evidence to make an arrest, you can file a *Violation Petition* with the court that issued your Order of Protection and/or you can file a new complaint in another court if you are eligible. It's a good idea to write down the names and badge numbers of the officers because you may want to follow up on your case later on.

If you get an Order of Protection with a condition that your abuser "stay away" from you and your home, it is important to remember that

the police may arrest the abuser if he comes to your home, even if he just wanted to come over to talk. Don't invite your abuser over or let him come near you if there is a "stay away" Order. Legally, you cannot be charged with violating the court Order, since it is against your abuser, not against you. However, if you invite your abuser over or voluntarily get together with him, you may end up getting hurt, your abuser may get arrested, and the police or the judge may not take your case seriously in the future. If you want to get back together with your abuser, it is best to wait until you have both appeared before the judge who issued the Order and ask him/her to remove the "stay away" provision of the Order. (*See Changing The Order Of Protection*).

You must, however, obey any custody or visitation Order issued by the court. Therefore, it is important to make sure that the Order of Protection and the custody/visitation Order do not conflict with one another. For example, the Order of Protection may say that your abuser must stay 1,000 feet away from your home; but the visitation Order says that your abuser must pick the children up at your house. If such a conflict exists, be sure to point it out to the judge(s) who issued the Orders or ask a domestic violence advocate for help in straightening out the problem.

An Order of Protection can be in effect for up to three years. If you still need protection when it runs out, you can go back to court and ask that your Order be extended, but you will have to show that you are still in danger. It is important to document any incidents during the time the Order of Protection is in effect, including threats or minor incidents so that you will be able to remember them when your Order of Protection expires. Any time that you need help, you can call your

local domestic violence program for assistance. You don't have to go through this alone.

Changing The Order Of Protection

If you would like to have a change made in an Order of Protection or in a custody Order, you can file a *Modification Petition* - a petition that explains that things have changed and that you would like the Order to be changed. If the abuser has been living in your home, you may now want an Order requiring that he leave. If the abuser moves out, you might need child or spousal support. You might want an Order saying the abuser may not come to your workplace or your children's school or you may want to change child visitation arrangements. If your partner was ordered out of your home, and you want to live together again, you can drop the "stay away" provision but keep the rest of the Order unchanged. To make any changes to an existing Order of Protection, you must go to the court that issued the Order (unless the Order states you may go elsewhere), file a Modification Petition and ask the court for the changes you want.

An Order of Protection cannot guarantee your safety. Some abusers will not obey them. Still, an Order of Protection can be an important step toward helping you get safe.

You may want to consider some other options, like joining a support group for victims of domestic violence or getting supportive counseling at a domestic violence program. The programs listed in the back of this Handbook can assist you in finding the services you need.

Federal Law

Some domestic violence crimes are punishable under federal law, as well as under state law. For example, if your abuser travels from one

state to another with the *intent* to violate an Order of Protection or to injure, harass, or intimidate you, **and** then actually violates that Order or causes you bodily injury, this is a federal crime. If your abuser has ever **forced you** to cross a state line with the intent to injure, harass or intimidate you, this is also a federal crime.

Federal law also prohibits interstate stalking. For example, if your abuser crosses a state line with the intent to injure or harass you, **and** then actually causes you to have reasonable fear of death or serious bodily injury to yourself or a member of your immediate family, this is also a federal crime.

These laws are particularly helpful if your abuser has abused or threatened you in two or more states. For example, maybe you work in New Jersey or Pennsylvania but you live in New York, and your abuser has injured or harassed you in both states. Under such circumstances, it can often be difficult to know which police department to contact for help. In such a case, you should inform the District Attorney in either state as soon as possible. He or she will tell you how to proceed. Additionally, these laws can be used to increase the penalties against your abuser. A domestic violence advocate can also help you with this process.

Under federal law, if a person is convicted of a misdemeanor domestic violence offense they will lose their right to obtain a gun permit or to legally carry a gun. This law includes police officers, corrections officers, and military personnel.

Getting Help From Social Services

In New York State, all victims of domestic violence, regardless of immigration status, can access emergency services including shelter, counseling, support groups, advocacy and other crisis services, regardless of income or resources. In fact, if you are in immediate need, you are entitled to receive help the same day you ask for it. If you have a limited income, you may be eligible for other benefits through the Department of Social Services (DSS), or in New York City, the Human Resources Administration (HRA). Even if you own property, have bank accounts, or other assets, if you're not able to get to them safely, you may also be eligible for other benefits. Certain immigrants, or their children, may also be eligible to receive benefits. If you are an immigrant and are unsure of you or your children's eligibility for social service benefits, it is important that you contact a domestic violence programs or immigrants' rights group to ask them about your status. Do not contact DSS/HRA or the Citizenship and Immigration Services (CIS, former INS) to find out information about your status, as you may risk your ability to remain in this country.

Although requirements for public assistance have become stricter, there are special protections and services for victims of domestic violence. Everyone who applies for public assistance is screened for domestic violence. When you receive your public assistance application (or when you are re-certifying) you will see a page entitled *Domestic Violence Screening Form*. You don't have to answer these questions. However, if you are a victim of domestic violence, it may be to your advantage to answer them. If your answers indicate that you are a victim of domestic violence, you will be referred to a *Domestic Violence Liaison*. In order to be referred to a specially trained Domestic Violence Liaison, you will be asked to sign the Screening

Form indicating that you are a victim of domestic violence. Agreeing to meet with the Domestic Violence Liaison will **not** slow down your application for public assistance benefits.

The Domestic Violence Liaison will tell you about services that are available to help you and your children stay safe, but you don't have to use these services if you don't want to. Additionally, victims of domestic violence may be eligible for waivers from certain DSS/HRA requirements if following those requirements would make it difficult for you or your children to escape from domestic violence or if following the requirements would put you or your children at risk of more domestic violence. In order to qualify for the waivers, you will be asked to show proof of the domestic violence. Such proof may include hospital records, police reports, an Order of Protection, or minimally, a sworn statement. Initial waivers are granted for a minimum of six months, but they can be extended if you or your children are still in danger. After the initial period, a re-assessment may require that the waiver be extended, modified, or terminated depending on your circumstances at that time.

If you have children, DSS/HRA will ask you to provide the name, address, and other information about the father of these children. DSS/HRA uses this information to locate the father in order to collect child support and to find out if he is able to provide health insurance for the children. A Domestic Violence Liaison can grant a waiver of all or some child support collection requirements if following the requirements would make it difficult for you or your children to escape from domestic violence, or put you or your children at risk of more domestic violence.

Even if you have not been granted a domestic violence waiver, you still have the right to request a *Good Cause Exception* from specific child support requirements if you have other fears or concerns about following those requirements. If you request a Good Cause Exception, the DSS/HRA must investigate your claim. The DSS/HRA can excuse you from all or some child support requirements.

If your abuser is with you when you apply for public assistance, you may decide it is safer to not say anything to the worker about the violence. However, you can call the DSS/HRA worker or your nearest domestic violence program later, when it is safe.

If you are currently on public assistance, DSS/HRA workers must provide the Domestic Violence Screening Form to you if you identify yourself, at any time, as a victim of domestic violence or if you request the Domestic Violence Screening Form. You will also have an opportunity to complete the Domestic Violence Screening Form when you apply for re-certification. However, you may apply for a domestic violence waiver **at any time**.

If you are denied a waiver, but believe that the DSS/HRA requirements will place you or your children in danger, you have the right to appeal that decision. You may want to contact a domestic violence advocate for assistance.

Everything you tell the DSS/HRA worker or the Domestic Violence Liaison is confidential **except** if you report that your children are being abused or neglected. If you tell the worker or the liaison about child abuse or neglect, they must report it to Child Protective Services. In turn, a Child Protective Services worker must investigate the report.

If you are eligible for services, the DSS/HRA may be able to help:

- arrange and pay for you and your children to stay in a domestic violence shelter or, if your local shelter is full, find another safe place for you to stay;
- provide emergency medical assistance (Medicaid);
- arrange for Expedited Food Stamps so that you can buy food right away;
- pay for storing your furniture and other personal belongings;
- pay for moving expenses, rent, security deposit or agreement, or broker's or finder's fees;
- pay for household items needed to set up a home;
- pay for transportation for your children to go to and from school while your family is in emergency housing.

Look in the phone book under the County section to locate your local Department of Social Services (in NYC, look under the Human Resources Administration for your local Income Support Center.) Call before going to make sure that it is the proper office for your address (the place where you are staying, even if it is temporary). Applying for public assistance can be a very confusing process. However, your local domestic violence program can assist you.

If you have been beaten, abused or threatened with violence,

DSS/HRA will consider this an "emergency" and must interview you and make a decision regarding emergency assistance on the same day. If you are already getting public assistance and you have an emergency, tell the worker right away. If you are not getting public assistance, fill out an application and tell the worker that you have an emergency. You should complete the application and give it back on the same day you receive it. Your worker will tell you what information you need to provide before you can get assistance to meet your emergency needs. You will be asked for proof of who you are and of who your family members are; you will be finger imaged; and you will be screened for drug and alcohol abuse. The worker will also want to know if you have any income or resources, such as bank accounts, vehicles, or property. If you cannot get the information, your worker must try to help you get the information.

If it is determined that your need is immediate, you should receive help to meet this emergency the same day.

If you are not in an emergency, you will be given a list of necessary documents to prove eligibility. Appendix A shows those items you will need to prove certain things. Gather the documents and return to the center on the date of your interview. You will see a worker who will check the form and documents. If you need to bring more documents, you will be given a list of what is needed and a date to return. You should be told within thirty days of the day you turn in your paperwork if your application is approved or denied. If you do not have children, the decision may take up to forty-five days.

Processing Acceptance

Because of the paperwork involved, it can take some time before you

actually receive money or other benefits. You may be told verbally or by mail that you have been accepted, but it may be some time before you receive your Benefit ID Card (In NYC, your EPFT photo ID Card) that allows you to pick up your benefits. If you can prove that you have an immediate need, your immediate need should be met sooner.

What To Do If Your Application Is Denied

If your application is denied, you will receive a notice telling you why. You have the right to a conference and a *fair hearing*. To ask for a conference, call your local DSS/HRA. A conference is when you meet with someone other than the person who made the decision about your case. This person will review that decision. If the problem is not settled through a conference, you can ask for a fair hearing. It is a good idea to request a fair hearing at the same time you request the conference because it may take a long time to schedule a fair hearing. The fair hearing can be canceled if the conference satisfactorily resolves the issues. At the fair hearing you will have the opportunity to tell an Administrative Law Judge why you think the decision about your case was wrong. If the judge agrees, he or she can order the DSS/HRA to correct your case.

Crime Victims Compensation

As a victim of domestic violence, you may be able to receive compensation for certain expenses you have had to pay, and for which you will not be reimbursed. In order to be eligible for compensation from the Crime Victims Board you must have filed a police report, family offense petition, Child Protective Services report or other criminal justice report against the perpetrator of the crime committed

against you. Compensation is available solely to the victim of a crime, unless otherwise specified.

You may be eligible if:

- you have sustained personal physical injury as a result of a crime (sexual assault is considered physical injury);
- you are a child victim or child witness of a crime (under age 18) or his/her parent, guardian or sibling;
- you are elderly (60 or older), a minor (under 18) or disabled victim of a crime who has suffered a loss of or damage to essential personal property (cash, food, clothing, purse/wallet, eye-glasses, etc);
- you are a surviving spouse, parent, child, or person dependent upon a victim who has died as a direct result of a crime;
- you have paid or are responsible for the burial expenses of an innocent victim who has died as a direct result of a crime;
- you are the victim of a sex offense;
- you are a victim of stalking;
- you are the spouse, child or stepchild of a victim of a crime who has suffered physical injury.

Compensation **MAY** cover:

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- loss of essential personal property;
 - lost earnings or support;
 - medical expenses not covered by insurance;
 - counseling services not covered by insurance for you and your immediate family members, including stepfamily and grandparents;
 - job training or occupational rehabilitation expenses;
 - security devices if you are a victim of stalking;
 - transportation for court appearances;
 - cost of staying at a domestic violence shelter;
 - crime scene cleanup expenses.

It takes several months to a year to receive compensation, but in some cases you may be eligible for emergency assistance. You can contact your local domestic violence program or the New York State Domestic Violence Hotline at 1-800-942-6906 to see if you are eligible for crime victims' compensation.

24-Hour Domestic Violence Hotlines

1-800-942-6906 English

1-800-818-0656 TTY

1-800-942-6908 Spanish

1-800-780-7660 TTY

State of New York
George E. Pataki, Governor

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