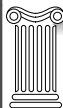


*Taking Action Against Abuse:
A Guide to the Courts
for Victims of Domestic Violence
in New York State*

The Fund for Modern Courts, Inc.



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Robert M. Kaufman Fund***

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Taking Action Against Abuse:
A Guide to the Courts for
Victims of Domestic Violence
in New York State

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PART I: INTRODUCTION

About This Booklet 1
Other Guides 1
The Epidemic of Domestic Violence 2
Are You a Victim of Domestic Violence? 3
How Can a Domestic Violence Advocate Help Me? 4
Should I Leave the Relationship? 5
What is a “Personal Safety Plan,” and Why Should
I Have One? 6

PART II: TAKING ACTION AGAINST DOMESTIC VIOLENCE

What Can the Family Court Do for Me? 7
What Can a Criminal Court Do for Me? 8
What is an Order of Protection? 8
In Which Court Will My Case Be Heard? 9

PART III: GOING TO FAMILY COURT

Which Courthouse Do I Go To? 12
When Is the Family Court Open? 12
Can I Bring My Child to Family Court with Me? 13
What Kind of Case Do I Bring in Family Court? 14
What Should I Bring with Me to Family Court? 14
Where Do I Go to Start a Case in the Family Court? 15
What Should I Tell the Petition Clerk? 15
Should I Read the Petition Before I Sign It? 16
What Happens When I Go Before a Family Court
Judge?—Getting a Temporary Order of Protection 17
How is the Temporary Order of Protection Delivered
to the Abuser? 17
How Long Does the Temporary Order of Protection
Remain in Effect? 18
What Other Relief is Available? 18
Do I Have a Right to a Lawyer? 18
When Do I Meet My Lawyer? 19

What if My Lawyer Doesn't Call Me?	19
Getting a Permanent Order of Protection—	
The Fact-Finding Hearing.	19
What Is Decided at the Fact-Finding Hearing?	21
Who Must Be Present at the Fact-Finding Hearing?	21
What Happens at the Fact-Finding Hearing?	22
Advice on Speaking to the Judge	22
The Judge's Decision.	23
The Permanent Order of Protection.	24
How is a Family Court Order of Protection Delivered	
to the Abuser?	24
Will the Order of Protection Really Protect Me?	25
What Do I Do if My Abuser Violates the Temporary or	
Permanent Order of Protection?	26
Can the Court Change an Order of Protection?	26

PART IV: USING THE CRIMINAL COURTS

How Does a Case Get to Criminal Court?	27
What Does a Criminal Court Do?	27
Which Court Handles Criminal Cases?	28
How Can the Police Help Me?	28
Beyond the Arrest—What Other Help Can	
the Police Provide?	28
What Will the Police Do In Response to a Domestic	
Violence Incident?	29
What Factors are Used by the Police to Determine	
Whether to Arrest?	29
What Factors May Not be Used by the Police	
to Determine Whether to Arrest?	30
What Information Should I Give to the Police?	30
Can a Criminal Case Be Brought Without an Arrest?	31
What Happens When the Abuser is Arrested?	32
What Happens at Arraignment?	33
What Is My Role After Arraignment?	34
Keeping the Abuser in Custody—Why Does the Court	
Set Bail?	34

What Does it Mean to “Take a Plea”?	36
What is Plea Bargaining?	36
How Do I Get an Order of Protection from a Criminal Court?	37
How is an Order of Protection from a Criminal Court Different from One Issued by a Family Court?	37
How is a Criminal Court Order of Protection “Served” on the Abuser?	38
Will the Abuser be Punished for Violating a Criminal Court Order of Protection?	38
Can I Change an Order of Protection?	39
What Happens if a Case Goes to Trial?	39
What Sentence May Be Imposed?	40
What Is My Role in a Criminal Case?	41
Will I Lose Pay or be Penalized at Work for the Time I Take Off to Come to Court?	42
Are There Any Tips on Being a Better Witness?	43
What Are My Rights as a Victim?	44
Appendix I: A Personal Safety Plan	47
Appendix II: Eleven Things a Good Attorney Should Do	51
Appendix III: Glossary	57
Appendix IV: Chart: Comparing Family and Criminal Courts	64
Domestic Violence Resource List: Courts, District Attorney’s Offices, and Services for Victims of Domestic Violence	Inside Back Cover

PART I: INTRODUCTION

About This Booklet

Each year, thousands of domestic violence victims go to court in New York State to seek justice and protection. Like most average citizens who are unfamiliar with our complicated legal system, victims can find their experience in court to be confusing and intimidating. They do not know which court to go to, what to expect when they get there, who can help, and how to receive all of the protection from abuse that is provided by law.

This guide, published by the nonprofit Fund for Modern Courts and the Pace University Battered Women's Justice Center, is for victims of domestic violence who must use the courts in New York State. It describes the victim's legal options, and offers step-by-step instructions on how to have the abuser arrested, how to go to court, and how to get and enforce an Order of Protection. It also lists social service agencies where you can find help, and describes how you can prepare a safety plan to help you avoid harm while leaving an abusive relationship.

The information contained in this guide should not be relied on in place of legal representation. Because each case is different, you should consult with an attorney or legal advocate for specific advice about your case.


Other Guides

We also encourage you to refer to other sources of information. Two especially useful booklets available free of charge are:


Domestic Violence Handbook, published by the New York

State Coalition Against Domestic Violence (1-800-942-6906); and

Domestic Violence: Finding Safety and Support, published by the New York State Office for the Prevention of Domestic Violence (518-486-6262).

 **NOTE:** *Most cases of domestic violence involve men who abuse their female partners. However, there are women who abuse their male partners, and there is abuse in gay and lesbian relationships.*

Wherever possible throughout this booklet, we use “gender neutral” language. In some instances, however, the abuser is referred to as “he” and the victim as “she.” We hope the reader will understand that the information in this booklet applies whether the abuser is male or female.

 **GLOSSARY:** *Throughout this booklet, there are words and phrases that are underlined. You can look up the meanings of these words and phrases in the glossary, which is Appendix III in the back of the booklet.*

The Epidemic of Domestic Violence

Domestic violence is an epidemic in the United States. It is not one of our most talked-about problems, but it is one of our biggest.

Across the country, one woman is battered every 11 seconds and over 2.1 million women are battered every year. This makes domestic violence one of the most frequently committed crimes in America. And experts believe there are many more cases of domestic violence than are actually reported.

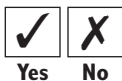
Domestic violence is the single largest cause of injury to women. It results in more injuries than mugging, rapes, and auto accidents combined. A third of all murders of women and a third of women's hospital visits are caused by domestic violence. **If you are a victim, you are not alone.**

Are You a Victim of Domestic Violence? Domestic violence is behavior that one person in an intimate relationship uses to control the other. It can include physical, sexual, emotional, economic and/or psychological abuse.

Domestic violence often involves a pattern of abuse. Some of the abuse, such as name calling, or pushing and threatening, may not seem extreme. Sometimes the abuse is more extreme, such as punching or kicking the victim. In all cases, the abuse is a way for the batterer to control the victim.

Domestic violence is the abuser's fault, not the victim's. The victim does not cause or provoke the violence because of selfishness, nagging or other behavior. And the victim cannot end the violence by trying to be "better" or trying harder to please her partner.

It is not always easy to recognize whether you are a victim of domestic violence—and whether you are entitled to legal relief through the court system. This is especially true if the domestic violence does not include physical abuse.



The following list of behaviors may help you decide if you are a victim of domestic violence:

Acts of Physical Violence. Does your partner hit, grab, pinch, shove, slap, choke, kick or bite you? Does he (or she) deny you medical care, prevent you from taking medications, or


force you to use alcohol or drugs?

Sexual Abuse. Does your partner force you to have sex when you don't want to?

Economic Abuse. Does your partner make or attempt to make you financially dependent? Examples: taking your money, withholding money or credit cards, stopping you from going to school or working.

Emotional Abuse. Does your partner frequently criticize, embarrass, or insult you, or damage your relationship with the children?

Psychological Abuse. Does your partner make you afraid by threatening physical harm to you or your children, threatening to harm family pets, displaying weapons, destroying your property, preventing you from going where you want to go, or isolating you from family, friends, school, or work?

 **If your partner does any of the abusive things described above, or does other threatening or intimidating things that make you afraid, you may be a victim of domestic violence.** Abuse is never okay. You are not alone. You have a right to a life free from abuse. Help is available.

**How Can
a Domestic
Violence
Advocate
Help Me?**


Whether you are thinking about going to court, have already called the police, or don't know where to turn next, free assistance is available from a domestic violence advocate.

A domestic violence advocate is someone who helps victims. An advocate understands what you are going through, is familiar with the courts, and can help you to figure out how

to protect yourself from future harm.

An advocate can help you with shelter, counseling and advocacy. An advocate can assist you in preparing a “personal safety plan” to help you and your children find safety. A sample safety plan, which you can use as a basis for your own safety plan, is in Appendix 1 at the back of this booklet.


An advocate can give you useful information and emotional support. Often, an advocate can go with you to court and/or the police, and guide you through the process. Getting help from an experienced domestic violence advocate can help to make the justice system work for you.

 **To get in touch with the domestic violence advocate near you, see the information sheet inside the back cover of this booklet.**

**Should I
Leave The
Relationship?**

One of the most important decisions for a victim who is thinking about going to court is **whether you should stay or leave the abusive relationship**. No one can tell you what you should do—no one knows your circumstances better than you. However, there are some things you should consider:

1) *Now that you are seeking help, have left the household, or have called the authorities, will your partner increase the abuse?*

 **This is often the case.** So, it is important to have a **personal safety plan** in place, and to take precautions that will help to ensure your safety.

2) *If you take no action against the abuser, will you face even greater danger down the road?* Domestic abuse involves a pattern of violence which often gets worse over time, with bat-

terers increasing their use of threats, violence, or other forms of control.

3) *Will you be able to change the batterer's behavior?* **Almost certainly not.** Only the batterer can change his behavior. And no matter how you behave in the future—no matter how giving or “good” you are—the abuse will probably continue and get worse. Domestic violence is about the batterer’s decision to control you. It has nothing to do with what you have done or what you will do.

4) *Will the batterer abuse your children?* Most do. If you stay in a relationship with an abusive partner, you may endanger your children. This can create a risk of your children being placed in foster care.

**What is a
“Personal
Safety Plan,”
and Why
Should I
Have One?**

No matter what you decide—to stay, leave, call the police, or go to court—the situation is risky. It is important for you to have a **personal safety plan**. You should plan in advance for how you will handle a violent situation, where you will go if you have to leave in an emergency, etc. A sample of a personal safety plan is located in Appendix 1 of this handbook—page 47.

PART II: TAKING ACTION AGAINST DOMESTIC VIOLENCE

The rest of this booklet is about what the legal system can do for you. It will help you understand all the steps and decisions in the process.

If you decide to take legal action to protect yourself, the New York State court system provides two routes: the family justice system and the criminal justice system. Depending on your case, you may end up using both justice systems.

**What Can
The Family
Court Do
For Me?**



Using the family justice system means going to the **Family Court**. The Family Court is a civil court with the goal of protecting you and your family. It is not a *criminal* court, and is not designed to punish or jail the abuser.

You can use the Family Court if:

- **you are legally married to, divorced from, or otherwise related by blood or marriage to your abuser;**
- or
- **you have a child in common with the abuser, even if you have never lived together or had any other relationship.**

The main purpose of going to Family Court is to get a Temporary or Permanent Order of Protection. A Family Court judge can also decide custody, visitation and child support. The judge can also make the abuser attend a batterers' intervention program. And the judge can order the abuser to pay for abuse-related expenses such as medical care and property damage.

What Can a Criminal Court do for Me?

The criminal justice system can prosecute your abuser in the name of the People of the State of New York if the abuser has been charged with committing a crime. Many results are possible. A judge in a criminal court can give you an Order of Protection. The judge can sentence your abuser to spend time in jail, and/or to pay you for medical costs or property damage. The judge can also make the abuser attend a batterers' intervention program. Unlike the Family Court, however, the Criminal Court cannot decide custody, support, and visitation issues.



To use the criminal justice system (unlike the Family Court), you do *not* need to be legally married to, divorced from, or otherwise related by blood or marriage to your abuser, or to have a child in common with the abuser.

What is an Order of Protection?

An Order of Protection is a written document—a court order—issued by a judge to help protect you from abuse or harassment. An Order of Protection cannot guarantee your safety, but it can help.

You can get an Order of Protection from both the Family Court and the Criminal Court. Later in this booklet, we explain in detail how to get an Order of Protection.

An Order of Protection sets limits on your abuser's behavior. It can order the abuser to do and/or stop doing many things, including:



- to stop harassing and abusing you and your children;
- to stay away from you, your home, your workplace, and/or your family;
- to stay away from your home when under the influence

of drugs or alcohol;

- to have no contact with you or your children— including no phone calls, pages, e-mails, letters, or messages through other people;
- to stay away from the children, the babysitter, day care, or school;
- to stop acts that create a risk to the health, safety, or welfare of a child; and
- to participate in a batterers' intervention program, which may include drug and alcohol counseling.

A Family Court Order of Protection, but *not* a criminal court Order of Protection, can also order the abuser:

- to pay your lawyer fees spent in getting or enforcing your Order of Protection; and
- to pay your medical bills for care and treatment caused by the violent conduct.

A Family Court judge can also make decisions about child custody, visitation of children, and child support.



If you do not want your abuser arrested, but simply want a judge to order him to stay away from you, then you should go to the Family Court in your county and seek an Order of Protection. In addition, you must go to Family Court if you are seeking custody of the children, or a ruling on visitation or child support—a criminal court does not handle those issues.

If your abuser is arrested and/or formally charged with a crime, the charges will be heard in a criminal court. A criminal court can also issue an Order of Protection. However,

unlike the Family Court—where you can go directly to court and start a case by filing a petition—a case will go to criminal court only following the abuser’s arrest on criminal charges.

You can seek to have criminal charges brought against your abuser by contacting the police or District Attorney’s office in your county and filing a complaint. However, you should note that filing a complaint will not always result in an arrest.

Sometimes, the decision to go to criminal court is made without your say. This can happen if the police respond to a domestic violence incident and arrest the abuser, even if you did not call the police or file a complaint.

Even if criminal charges have been brought against your abuser, you can still go to Family Court to get an Order of Protection or to seek a ruling on custody, support or visitation.

Similarly, even if you have gone to Family Court and obtained an Order of Protection, the matter can also be heard in criminal court if your abuser is arrested. In other words, depending on the circumstances, your case may be in either or both courts. The advantages and disadvantages of going to a criminal court, a family court, or both are discussed below.

If you do not want to have the abuser arrested and punished, but are seeking protection from abuse, you should go to the Family Court and obtain an Order of Protection.

You should go to the police or the District Attorney’s office if you want the abuser to be arrested and punished. There is a chance that he will be sentenced to time in jail. But you should know that the abuser may not be sent to jail. A judge may

simply warn the abuser that serious action will be taken if he is arrested again (this will be described in more detail later in this booklet). He is likely to be sent home the same day or the day after he is arrested.

Having the abuser arrested and brought to criminal court may send a stronger message to him than filing a petition in Family Court. However, it also may result in greater anger toward you (although a criminal court can also give you an Order of Protection).



PART III: GOING TO FAMILY COURT

Which Courthouse do I Go To?

There is a Family Court in each county of New York State. Consult the list in the pocket inside the back cover of this booklet to locate the Family Court nearest you.

When is the Family Court Open?

Throughout New York State, the Family Court is open each weekday from 9 a.m. to 5 p.m. In Brooklyn, there is a night court session of Family Court from 5:30 to 9:30 p.m. each Tuesday and Thursday. By the time you read this, there may be night hours in other Family Courts. To find out whether there are evening hours in your county, call your local Family Court, listed on the sheet inside the back cover.

In an emergency, you may need a Temporary Order of Protection during hours the Family Court is closed. If you live in New York City and you feel you are in danger at night or on the weekend, you don't have to wait for the Family Court to be open. **At night or on weekends, you can go to the Criminal Court nearest you to get the Temporary Order of Protection.**



Elsewhere in the State, a criminal court judge can issue a Family Court Order of Protection when Family Court is closed, although many criminal courts are not open on weekends and after hours. You can check the sheet inside the back cover for information on your local courts. **If you are granted a Family Court Temporary Order of Protection from a criminal court, this will be good only until the next business day. You will then have to go to the Family Court to have the Order extended.**



If you go to Family Court during normal working hours, get there early if you can. The earlier in the day you go to court, the sooner you will see a judge and the less time you will spend in court.

**Can I Bring
My Child
to Family
Court with
Me?**

Children are permitted in Family Court, but you should only bring your children with you if you can't find someone to watch them. Having your child with you in court may make it hard for you to concentrate on your business. It can also be a difficult experience for the child.

Some branches of the Family Court have children's centers. These centers are staffed by sensitive people who are trained in child care. The centers are brightly decorated and have a supply of toys and games. There are areas for playing, napping, eating, and educational activities. The centers can also help you to find social services. There are Children's Centers in the Family Court in all five boroughs of New York City, and in the Family Court in the following counties: Albany, Dutchess, Erie, Genesee, Green, Monroe, Nassau, Onondaga, Orange, Rensselaer, Suffolk, Sullivan, Ulster and Westchester (Yonkers branch).

However, there is limited space in the Children's Centers, and they may not have room for your child. So if you do have someone to take care of your child while you are in court, you should avoid bringing the child with you. And if you have to bring your child, make sure you get there early so there will be a space for your child in the Children's Center.

What Kind of Case Do I Bring in Family Court?

When you go to Family Court seeking protection, you begin a legal case known as a “family offense” proceeding. The goal of a family offense proceeding is to stop the violence and protect all family members. As the victim or complainant, you are called the “petitioner” in the case, and your abuser is called the “respondent.”

What Should I Bring with Me to Family Court?

It is important that you bring some form of identification, particularly a photo I.D. if you have one. Information about the abuser—his date of birth, Social Security number, and address—would also be helpful and would make the process go more quickly, but is not necessary.

It is also helpful if you can bring any evidence you may have of the violence that has occurred. This can include:

- photos of yourself that show bruises or other visible injuries;
- medical records from a doctor or hospital that treated your injuries;
- copies of police reports, and other types of physical evidence;
- witnesses—anyone who may have heard you call for help or seen that you were bleeding or bruised.



While these and other forms of evidence can strengthen your case, **the most important evidence is what you tell the judge.** Even if you do not have physical evidence or witnesses, you should not feel discouraged from going to court.

**Where Do I
Go To Start
a Case in
the Family
Court?**

To begin your case in Family Court, you should first go to the petition room (if you are in New York City or in some counties outside of New York City) or to the Intake Unit of the Department of Probation (in other counties). If you are not sure where to go, you can ask a court officer in the building for assistance. Once at the petition room or Intake Unit, you sign in and wait until your name is called. You will then be brought to see a petition clerk or probation officer.

NOTE: You may wish to consult with a domestic violence advocate *before* going to court for the first time. In some courthouses, there are advocates on site who can help explain and guide victims through the process. If so, you may want to contact an advocate as your first stop in court. A list of domestic violence advocates, including those located in local courthouses, can be found in the pocket inside the back cover of this booklet.

Initially, the petition clerk will listen to your complaint and then ask you follow-up questions to get the important details. Based on the information you have provided, the clerk will write up a “petition,” which will be brought to the judge and used as a basis for the case.


**What
Should I
Tell the
Petition
Clerk?**

The Petition Clerk or Probation Officer will interview you. You will need to give the date, time, and place of the abuse. You will need to describe exactly what happened.

Give the facts simply and clearly. Say exactly what the abuser did. Be specific—don’t just say, “I got roughed up,” or “I was pushed around.” Rather, say, “I was kicked __ times” or, “I was punched in the face __ times.”

It is also important to tell the clerk:

- if you have been abused at other times;
- if your children have been hurt, threatened, scared, or have witnessed the abuse;
- if you have ever called the police to report violence against you or to ask for protection;
- if you have ever had to seek medical help due to abuse;
- if the abuser owns guns or other weapons; and
- if drugs or alcohol are involved.

 Be as complete as possible. Give information on all past abuse. **It is helpful to write down and organize this information before you come to court.**

You do not need to feel shy or embarrassed when speaking to the clerk. The clerks hear many stories of abuse every day. They are usually caring and trained to help you. **Remember, you have done nothing wrong.**

**Should
I Read the
Petition
Before
I Sign It?**

After the clerk or probation officer has written the petition, you should be offered a chance to read it. If you are not offered the opportunity to see the petition, be sure to **ask to read it**. This is your right.

The petition can make or break a case! It will be reviewed by the judge, and will be used as the basis for any Order of Protection or other relief that is issued by the court. Therefore, you should read the petition carefully. Ask the clerk about anything you do not understand. Make sure the petition is correct. Ask the clerk to add anything that is missing. Also, ask the clerk to correct any mistakes. **Do not sign your petition until you have read it.**



What Happens When I Go Before a Judge?—Getting a Temporary Order of Protection

After the petition is completed, it is sent to a courtroom called the “intake part.” You will be told to go to this courtroom and to wait for your case to be called. Most times, the case will be called on the same day that you filed the petition. However, if the court is very busy, you may have to come back the next day. **But if the case is an emergency, your case will be heard by a judge the same day.**

After your case has been called, the judge will read the petition. The judge will then decide whether you need a Temporary Order of Protection. A Temporary Order of Protection can be given to you even though your abuser is not in court. It is issued to help you be safe from harm, and is in effect until the date your abuser is told to come to court and respond to your allegations. The reason it is temporary is that the judge must try to get your partner’s side of the story before deciding whether to give you a Permanent Order of Protection.

The judge will need some information before giving you an Order of Protection. He or she will ask you about your case. Make as strong a case as you can, but keep your answers short and stick to the facts.

How is the Temporary Order of Protection Served on (Delivered to) the Abuser?

If the court does issue a Temporary Order of Protection, the Order must then be served on (delivered to) your abuser. The Order of Protection will be delivered along with a copy of the petition. There will also be a notice telling the abuser to go to court on a specific date. On this date, the respondent (the abuser) is usually asked to admit or deny the charges. Another date is then set for a “fact-finding hearing,” the Family Court’s version of a trial.

By law, the judge must give you a choice of how to deliver

these papers. You cannot serve the papers yourself. However, you can have the police serve the papers, or you can get someone else to do it (as long as that person is at least 18 years of age and is not involved in the case). Most petitioners prefer to let the police serve the papers on the respondent because they believe it is safer.

How Long Does the Temporary Order of Protection Remain in Effect?

A Temporary Order of Protection remains in effect from the moment the abuser is served with the papers until the date the Order tells the abuser to come to court. At the hearing, the judge will decide whether to issue a “Permanent Order of Protection.” A Permanent Order generally remains in effect for one year. However, if there are “aggravating circumstances,” the judge can issue an order for up to three years. Aggravating circumstances include factors such as past violations of Orders of Protection, past threats or incidents involving weapons, or other circumstances that raise fears about what the abuser might do.

What Other Relief is Available?

In addition, a Family Court judge can issue something many victims of abuse find extremely helpful, a Temporary Order of Child Support. You must ask the judge for this. And, if the judge believes you are in immediate danger, he or she may issue a warrant for the respondent to be arrested and brought before the court.

Do I Have a Right to a Lawyer?

At your first hearing in the Intake Part, the judge will inform you if you have a right to a lawyer. In many family offense cases, the victim is entitled to have a lawyer, although it is not necessary for you to have one in order to get help from the Family Court. If your income is below a certain amount,

the law requires the court to assign a lawyer to represent you free of charge. An assigned lawyer will either be an attorney from the Legal Aid Society or another legal services organization, or a private lawyer whose fees are paid by the State.

When do I Meet My Lawyer?

When a judge assigns a lawyer to represent you, the lawyer is supposed to call you before the date on which you and the abuser are scheduled to return to court. The lawyer may provide an opportunity to meet before that date, or may simply tell you to meet him or her in court on the date of the fact-finding hearing.

What if My Lawyer Doesn't Call Me?

If you do not hear from the lawyer, you should call the lawyer's office. If you do not get a response from the lawyer, you should call the Family Court, ask for the judge's chambers, and leave a message that you have not heard from your lawyer. (You might keep a record of how many times you have tried calling the lawyer.) If necessary, you can ask the judge for a new lawyer.

Getting a Permanent Order of Protection—The Fact-Finding Hearing

When you return to court for the fact-finding hearing, the judge will try to decide whether to issue a Permanent Order of Protection. This may take more than one appearance in court, so be prepared to return to court more than once.

Preparation for Court. It is helpful to prepare *before* you go to court for the fact-finding hearing. You should:



- *Prepare to spend the entire day in court, and to take extra days off from work in case the hearing is not completed in one day.* (A State law prohibits your employer from

penalizing you for taking time off to go to court; more on this law on page 42.);

- *Learn beforehand whether the court has a children's center.* (See page 13 for more about these centers.) Even if there is a children's center, it will have limited space. So if there is a children's center and you have no other arrangements for child care, you should get to court early (by 9 a.m.) to make sure there is a space for your child in the children's center.
- *Dress respectfully, perhaps as though you were going to work in an office.* This can make a difference in how the judge perceives you.
- *Bring evidence to support your case if you have any.* Examples: medical records from a doctor or hospital that treated your injuries, a police report, photos of yourself that show bruises and other injuries, photos of property that was destroyed, a bill showing the cost of furniture or clothing that was damaged, and anything else that can help to prove what happened to you. If you have visible injuries, get someone to take a picture of you as early as possible. The injuries may no longer be visible by the time of the court date.
- *Bring with you to court anyone who can help you prove that the violence happened.* If, for example, a neighbor, a friend or a relative heard you call for help, saw that you were bleeding or bruised after the incident, or actually witnessed the violence, try to bring that person with you.
- *If you want the judge to order the abuser to pay you for costs resulting from the abuse, bring hospital bills, bills for the cost of replacing furniture or clothing that was damaged, and any other relevant bills.*
- *Rehearse.* Practice saying what you want to tell the judge. Think of questions the judge might ask. Think about things your abuser or his attorney might ask you or say

about you. Knowing what you'll say will help you to handle situations in court calmly. Anticipating what might be said against you will help you to keep your cool. An advocate from a domestic violence program can be especially helpful here.

What Is Decided at the Fact-Finding Hearing?

The fact-finding hearing is held before a Family Court judge. (There are no juries in Family Court.)

The purpose of Family Court is not to punish; it is to find a solution to your problems and to make the people involved work toward that solution. At the fact-finding hearing, the judge will decide whether what you said in the petition is true, whether a Permanent Order of Protection should be issued, and what should be included in the Order. The judge may also make decisions involving custody of the children, visitation rights, and property issues.

Who Must Be Present at the Fact-Finding Hearing?

Both you and your abuser must attend the fact-finding hearing. **If you do not show up at the correct date and time, the judge cannot issue a Permanent Order of Protection, and your Temporary Order of Protection will not be renewed.** If your partner does not show up, a new court date may be set. (In some cases, a judge may decide to rule in your favor and give you a Permanent Order without your partner being present.) The judge can order that your partner be arrested to make sure he is present on the next date.

- If you received a Temporary Order of Protection the last time you were in court, you can ask for an extension until the next court date. (Under some circumstances, the judge will issue a Permanent Order of Protection at

this point, even if the respondent is not present to defend himself or herself.)

- If for some reason you can't go to court on the hearing date, call the clerk right away and explain. Ask for more time (a continuance) and explain why you need it. The hearing will usually be set for another date.

What Happens at the Fact-Finding Hearing?

If you and your abuser both show up, the judge will hold the fact-finding hearing. At the hearing, the judge will decide whether what you said in the petition is true. To do so, the judge may ask both of you questions about what happened. The judge may also ask other questions about your relationship, such as whether there has been violence in the past.

Advice on Speaking to the Judge

The *Domestic Violence Handbook*, published by the New York State Coalition Against Domestic Violence, has some good advice about speaking 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.

Everyone in the courtroom is expected to treat the judge with special respect, so always call the judge “Your Honor” or “Judge” 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 question with “Yes, Your Honor” or “No, Your Honor,” that is 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 and may therefore 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 the abuser's lawyer, if there is one) has the right to give his or her 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 not get into an argument. Do not say anything until the judge asks you to speak or tells you to answer a question. If your abuser lies, wait for your turn to talk and simply tell the court that what your abuser said was not truthful.

You should make sure 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 made against your friends or family. Also report harassment, such as repeatedly phoning or going to your place of employment, or stalking you.

**The
Judge's
Decision**

The judge may make a decision immediately after the fact-finding hearing has ended. Or the judge may take more time to make a decision.

If the judge cannot decide your case right away (that is, if the judge “reserves decision”), another date will be set for a

dispositional hearing. At this time, the judge will announce whether you will be given a Permanent Order of Protection. If you get an Order of Protection, the judge will also tell you exactly what the Order includes, and what the abuser is not allowed to do under the Order. The judge will, if applicable, also announce a decision on custody, visitation, support and other matters for the duration of the Order of Protection.

**The
Permanent
Order of
Protection**

After the judge has announced the decision, you will then be directed to go to the Court Order Processing Unit. There, you will get a copy of the Order of Protection.

A Permanent Order of Protection issued in the Family Court is usually effective for one year. However, the judge can make the Order last for up to three years if there are “aggravating circumstances,” such as severe physical injury, use of a weapon, repeated violations of Orders of Protection, prior criminal convictions, or exposure of children or other family members to harm. (For a description of what an Order of Protection can do for you, see page 8.)

**How is
a Family
Court
Permanent
Order of
Protection
Served
on the
Abuser?**

The police will deliver the Permanent Order of Protection to your abuser (unless he is present in the court). But how do the police receive the Order?

The judge should tell you that you have a choice: The court can deliver the Order of Protection to the police, or you can deliver it to the police yourself. If the court is going to deliver the Order to the police, then you will not automatically know when/if it has been received by the police. For this reason, most people choose to deliver the Order to the police themselves. **If the court is going to deliver the Order to the**

police, you should find out from the court which department or precinct will be involved, so you can later find out whether the police received the order and whether it was served on the respondent.

The police must attempt to deliver the Order to the abuser within 24 hours. However, they might fail to find the abuser in that time period. It is important that you know whether the abuser has been served, so you should call the precinct to find out.

**Will the
Order of
Protection
Really
Protect Me?**

A Temporary or Permanent Order of Protection cannot guarantee your safety, but it can help.

- Your abuser can be arrested and put in jail if he violates an Order of Protection. In fact, in certain cases, police are *required* to make an arrest when an Order of Protection has been violated. A violation of a criminal or Family Court Order of Protection in New York is at least a misdemeanor (punishable by up to one year in jail) and frequently a felony (punishable by more than a year in jail). A violation of a Family Court Order of Protection can be heard in both Family Court and criminal court.
- Police are likely to take your calls more seriously if you have an Order of Protection.
- If you have left your home, an Order of Protection can make it easier to arrange for the police to go with you and protect you when you return home to get your personal belongings.
- If you are being stalked or harassed at work, an Order of Protection can help you get your employer to cooperate and plan for your safety.

What Do I Do if My Abuser Violates the Temporary or Permanent Order of Protection?

If the abuser violates the Order of Protection, you can:

- call the police and have the abuser arrested and brought to Criminal Court to be arraigned. (The police are required by law to make an arrest if they believe the Order has been violated.)
- go to the Family Court [the petition room or the Department of Probation’s Intake Unit, depending on the county] to file a petition for a violation of an Order of Protection. If you decide to return to Family Court, you can ask the judge for additional protection.

Family Court and criminal court judges both have the authority to punish the offender with jail time for violating an Order of Protection.

Can The Court Change an Order of Protection?

Yes. At any time while an Order of Protection is in effect, you can ask the court to add, remove, or change its provisions. If you request a change, your abuser must be served with the new Order. The new Order should include a statement that the new Order replaces the old Order.



PART IV: USING THE CRIMINAL COURTS

How Does a Case Get to Criminal Court?

In a Family Court, *you* start the case by filing a petition. But in criminal court, a case usually begins when the police or the District Attorney's office files charges and the abuser is arrested. (See "Is there a Way to Bring a Case in Criminal Court Without an Arrest," on page 31, to learn how you can start a case in criminal court by going through the Court Dispute Referral Center or through your District Attorney's office.)

If you want to bring criminal charges after a domestic violence incident, you should begin by calling or going to the police. You should also notify the police if your abuser has violated an Order of Protection issued by the Family Court or a criminal court.

What Does a Criminal Court Do?

A criminal court can:

- issue an Order of Protection;
- order a defendant to attend a batterers' intervention program;
- impose a fine; or
- sentence the abuser to jail time and/or probation.



Criminal charges can be filed against the abuser whether or not he or she is related to the victim. **Every victim of crime in New York State has access to criminal court.** (In Family Court, by contrast, you must be legally married to, divorced from, have children with, or be related by blood or marriage to the abuser to bring a case.)

Which Court Handles Criminal Cases?

There are criminal courts in every county of New York State. However, the criminal courts go by different names in different locations around the State. When someone is arrested, their case first goes to the local criminal court for arraignment:

- In New York City, criminal cases begin in the *Criminal Court*.
- On Long Island: Depending on where you live, criminal cases begin in the *District Court* or a *town or village justice court*.
- Upstate: Depending on where you live, criminal cases begin in a *city court* or a *town or village justice court*.

How Can the Police Help Me?

Criminal charges are usually brought against an abuser when the police decide there is probable cause to believe the abuser committed a crime. The police may arrest the abuser in response to your call, or in response to a call placed by someone else who witnessed a crime (a neighbor, for example).

Beyond the Arrest—What Other Help Can the Police Provide?

In addition to arresting the abuser, the police can help you in other ways. If you ask, they are required to:

- help you get to a safe place away from the violence;
- help get you medical care for any injuries you may have;
- give you free copies of the police report;
- give you the location of the courts in your area and information on how to file a criminal complaint or Family Court petition;
- find out where you can go for more help; and
- get any necessary personal belongings from your home, such as clothing or medications.

What Will the Police Do In Response to a Domestic Violence Incident?

When responding to a domestic violence incident, all police departments in New York State must, by law, do the following:

- When a police officer has reasonable cause to believe an abuser has committed a serious offense (a felony), the abuser *must* be arrested, *even if* the victim does not want the abuser arrested. This is known as a “mandatory arrest” policy. The police officer *cannot* ask the victim whether or not she wants the abuser to be arrested.
- When a police officer has reasonable cause to believe that a less serious offense (a misdemeanor) has been committed, the abuser *must* be arrested, *unless* the victim asks that the abuser not be arrested. (Even if the victim does ask that the abuser not be arrested, the police may still arrest the batterer if they believe a crime was committed.)
- When a police officer has reasonable cause to believe that a minor offense (a violation) has been committed (for example, harassment or disorderly conduct), the police may arrest the abuser if the victim asks them to. This is called a “civilian arrest.” (Although, even if the offense is “minor,” the police officer must make an arrest if the officer witnesses the offense.)
- When a police officer has reasonable cause to believe that an Order of Protection has been violated, the offender *must* be arrested.

What Factors are Used by the Police to Determine Whether to Arrest?

A police officer does not have to be present when a crime takes place in order to make an arrest. Instead, the officer can make an arrest on the basis of factors such as:

- physical injury;
- property damage;
- signs of a fight; or
- statements by the victim or other witnesses.

What Factors May Not be Used by the Police to Determine Whether to Arrest?

By law, a police officer **cannot refuse to arrest the abuser** for any of the following reasons:

- the abuser lives with the victim;
- the arrest may cause financial problems for the victim;
- the abuser has left the premises or is willing to leave;
- the abuser and the victim are or were married;
- the victim has made the complaint before;
- the abuser promises not to hurt the victim again;
- the injury is minor or not visible;
- the victim is not willing to participate in later legal proceedings;
- either or both parties blame substance abuse for the violence;
- the victim is high or drunk;
- the victim has dropped charges before; or
- the police officer knows the abuser.

Under New York State law, the police are required to determine who the “primary aggressor” is. In other words, if the police respond to a complaint, they are supposed to arrest only the person who appears to have started the violence. They are not supposed to arrest the victim. However, the police still may arrest both parties if they believe that they are legally required to do so—for example, if it appears that there is probable cause to believe that the victim, as well as the abuser, has committed a criminal act.

What Information Should I Give to the Police?

The police will ask you what happened. They will write the information on a form, or have you write it, and then ask you to sign the form. It is important to **make sure that the police report says what actually happened**. The report should say

in detail what happened and any injuries that resulted. You don't have to sign the report if you don't want to, but it will help the court if you do. It is okay to ask the officer to change the report if it does not accurately say what you think happened. The police must give you a copy of the report, and a Victims' Rights Statement.

It is important to tell the police all that you can about what happened and to let them know if it has happened before. It also helps to let them know if you are afraid and/or in pain, even if your injuries are not visible.

**Can a
Criminal
Case Be
Brought
Without
an Arrest?**

In New York City, it is possible to bring a domestic violence case to criminal court if an arrest has not been made, through the Court Dispute Referral Centers (CDRC). (Elsewhere in the State, you would call your county's District Attorney's office directly.) The CDRC reviews situations where there has been no arrest, but the victim believes a crime was committed and wants to start a case against the abuser.

Before contacting the CDRC, you must first report the abuse to the police and obtain a complaint report number. When you go to CDRC in person, a screener will then listen to your information. The screener will talk to you about your options. If grounds for a criminal charge exist, the screener will recommend that the case be reviewed by the District Attorney's office. An Assistant District Attorney (ADA) will then decide whether or not to prosecute the abuser.

The ADA may decide to:

- accept your complaint and refer it back to the precinct so that an arrest can be made;

- refer the case to the court to start the criminal action without an arrest; or
- decide not to prosecute.

If the ADA decides to start a criminal action without an arrest, he or she will write up a “criminal complaint.” If it is approved, the court will then issue a summons for the abuser to appear in court. The court may also issue a Temporary Order of Protection. Since the defendant (the abuser) is not in court, these documents must be delivered in person to him. The Order of Protection is not valid until the defendant receives it. (You can request that the police serve these documents on the defendant for you.)

In some cases, the Assistant District Attorney will arrange for the police to arrest the defendant. In either case, the defendant will have to appear in court for arraignment. The case will then proceed like any other prosecution.

Outside of New York City, if a victim wants to complain against an abuser when no arrest has been made, the victim should contact the police and/or the county District Attorney’s Office. They will file a “Domestic Incident Report” and give you a copy. If necessary, the police will investigate to determine whether a formal charge and arrest is appropriate.

What Happens When the Abuser is Arrested?

After being arrested, the alleged abuser, who is now called a defendant, is brought to the police station to be “booked.” This means the police take fingerprints and obtain his criminal record, if he has one.

Depending on how serious a crime the defendant is charged with, the police can do one of two things. They can release

the accused with an appearance ticket. This requires him or her to appear in court on a future date. In other cases, the defendant is not released by the police. Instead, he or she is brought to a local criminal court for arraignment. Arraignment will usually occur no more than 24 hours after the arrest was made. **You should assume that your abuser could be released at any time after an arrest.**

**What
Happens
at
Arraignment?**

At arraignment, the District Attorney's office, which formally represents the People of the State of New York, will handle the case. (The case against the abuser is brought by the State of New York, not by you.) The person who prosecutes the case is an Assistant District Attorney (ADA).

The defendant is brought before a judge for the first time. The judge informs the defendant of the charges and of his right to have a lawyer. If the defendant cannot afford a lawyer, one will be assigned by the court.

If the crime is severe, the ADA will charge the defendant with a felony (an offense that can be punished by more than a year in prison). If the defendant pleads “not guilty” (see below), the judge will decide whether the defendant should be released on bail. The case will then be moved to the County Court (outside of New York City) or the Supreme Court (in New York City). A grand jury will decide whether there is enough evidence to indict the defendant on felony charges.

If the crime is less severe, the District Attorney will charge the defendant with a misdemeanor (an offense that can be punished by up to one year in prison, probation, and/or a fine of up to \$1,000). Again, if the defendant pleads not guilty, the judge will determine whether the defendant

should be released on bail.

If the defendant is going to be released until the next court date, the judge can issue a Temporary Order of Protection. This Order will be good only until the next court date. At that time the judge may decide to extend the Order to the following court date.

**What is
My Role
After
Arraignment?**

After arraignment, the case will be assigned to a bureau or to a particular prosecutor (called an Assistant District Attorney). To find out which bureau or Assistant District Attorney (ADA) has your case, call the District Attorney's office in the county where the defendant was arrested. (You may need to be tactfully assertive to obtain the information.)



You should try to speak with the ADA handling your case so that you can keep track of developments, and inform the ADA of anything he or she should know.

You should receive a phone call or letter from the District Attorney's office about your case. It is very important that you answer any letter or phone call from the prosecutor, so that you can help the prosecutor decide how to proceed with your case. The ADA will need information from you and may want to meet with you in his or her office. You probably will not be asked to appear in court unless there is a trial. However, the courts are open to the public and you are free to attend and bring anyone else with you if you wish.

**Keeping the
Abuser in
Custody—
Why Does
the Court
Set Bail?**

When a defendant pleads "not guilty," the judge must decide whether the defendant will be released on his or her own recognizance and told to come back to court at a future date, or whether the defendant must post bail in order to be

released. Bail is a sum of money, or some other form of collateral, given to the court to guarantee that the defendant will appear at the next court date. The defendant is released from custody when bail is posted.

In some cases, a judge will decide that the defendant should be held in jail without bail while the case continues. A judge will refuse to set bail if he or she thinks the defendant is not likely to return to court on the next court date.

In many cases—unless the crime is particularly serious (a felony) or the defendant has a significant criminal record—the defendant will be released from jail after arraignment, either on his own recognizance or having posted bail. The defendant may then want to go home, even though the court case is not finished. That is why an Order of Protection requiring the defendant to stay away from the victim may be useful. **This can be a very dangerous time, so it is important to make sure you get an Order of Protection.**

The defendant may choose to go to trial to fight the criminal charges. But in more than nine out of ten cases, the defendant pleads guilty and avoids a trial. The defendant might also be offered an adjournment in contemplation of dismissal (sometimes you'll hear this called an “ACD” or “ACOD”), especially when the defendant does not have a lengthy criminal record. This means the defendant is released and is told that if he does not commit another offense over a certain period of time (usually a year), the charges will be dismissed. Sometimes, abusers are ordered to attend a batterer's intervention program as part of an ACD.

You have a legal right to be contacted before the case is decided. But to make sure that you know what is happening in the

case, you should you continue to call the District Attorney's office to get updated information.

During this process, you should have a personal safety plan in order to protect yourself (see page 47).

What does it Mean to "Take a Plea"?

At arraignment or at a later court appearance, the defendant might decide to admit to all or some of the charges and plead "guilty." If this happens, the judge may sentence the defendant on the spot. But more often, the judge will delay sentencing to another date. Sometimes the judge will delay the sentencing to give the Probation Department a chance to conduct a pre-sentence investigation, which will help the judge to decide on an appropriate sentence. Sometimes, the defendant will take a plea to a lesser charge to avoid a trial. Again, such a plea bargain should go forward only after the Assistant District Attorney has consulted with the victim.

What is Plea Bargaining?

The case may be plea bargained. This means that the Assistant District Attorney and the defendant's attorney negotiate a reduced charge and sentence. If this happens, you don't need to testify at a trial—there won't be a trial.

You will want to discuss any proposed plea bargain with the Assistant District Attorney. As part of that discussion, tell the ADA what you think would be an appropriate outcome of the case, and what would be an appropriate sentence for the defendant.

How Do I Get an Order of Protection from a Criminal Court? When you file a complaint with the police or the District Attorney's office, you should also explain that you want a Temporary Order of Protection.

At the arraignment (when the defendant first comes to criminal court), the judge will decide whether a Temporary Order of Protection will be given to you. If you do get one, the Temporary Order of Protection will be in effect only from the time the defendant receives the Order until the case is decided by the court.

A criminal court judge can also grant you a Permanent Order of Protection as part of the defendant's sentence. In other words, if the defendant pleads guilty or is found guilty of a crime, the defendant's sentence may be accompanied by a Permanent Order of Protection. The Order of Protection will be in effect for up to five years. It cannot be extended unless violence occurs again.

A Permanent Order of Protection can also be issued by a judge to a defendant who receives an adjournment in contemplation of dismissal.

How is an Order of Protection Issued by a Criminal Court Different From One Issued by a Family Court? A criminal court Order of Protection provides most of the relief that a Family Court Order of Protection can provide. However, a criminal court Order of Protection cannot order the abuser to pay for expenses such as medical care and property damage (although the criminal court can order the defendant to pay a fine or restitution to the victim as a condition of sentencing). And a criminal court judge cannot decide certain issues that a Family Court judge can resolve, such as custody, visitation, child support, and division of property.

A criminal court judge can give you an Order of Protection that is effective for up to one year for ACD's, three years for misdemeanors, and five years for felony convictions. Note: A Family Court Order of Protection is usually effective for one year, but can cover up to three years in certain cases.

How is a Criminal Court Order of Protection "Served" on the Abuser?

If you get an Order of Protection from a criminal court, your abuser is probably already under arrest. The judge can have your abuser sign the Order in court. If the abuser is not under arrest, how it is served depends on which county you are in. You should ask the court clerk how this will be done. Do not leave court without being certain you understand how the Order will be served and how to verify if and when it was served.

Will the Abuser be Punished for Violating a Criminal Court Order of Protection?

An abuser can be punished for violating an Order of Protection. In fact, he can even be put in jail for up to seven years in a very serious case. If the abuser violates any part of an Order of Protection obtained in a criminal court, you should report this to the police or the District Attorney's office.

You should know that no matter what you do, it is the defendant who is responsible if the Order is violated. For example, if the Order requires the defendant to stay away from your home, the defendant can be arrested for coming to your home *even if you invited him*. In other words, *you* cannot violate the Order of Protection, only the defendant can violate it.

However, you may not be taken as seriously by the police or the legal system if you are viewed as having somehow "encouraged" your abuser to violate the order. In addition, your safety interests will be best served if you do not encourage your

abuser to violate any terms of the Order of Protection.

Can I Change an Order of Protection? If the abuse gets worse, you may want to have certain restrictions added to the Order of Protection to enhance your safety. Or, if things get better, you may want to remove some of the restrictions in the Order.

If you want the Order of Protection changed for any reason, you can ask the court. But remember, it is the *judge's* decision whether or not to change the Order of Protection.

What Happens if a Case Goes to Trial? The Assistant District Attorney will bring the alleged abuser to trial if there is enough evidence against him to prosecute the case and the defendant does not plead guilty.

A trial is the process by which it is determined whether the charges against the defendant have been proved beyond a reasonable doubt. A defendant has a right to a trial by jury. But the defendant can waive that right and choose to have a judge decide the case. A trial without a jury is called a "bench trial."

A jury trial begins with selection of a jury. A jury in a misdemeanor case has six jurors with one or two alternates (people who hear the case along with the other jurors, in case one of the jurors must leave the trial). A jury in a felony case consists of twelve jurors and two to four alternates.

Jurors are people in your community. However, people who know you, your abuser, or your families, or who cannot be impartial for any other reason, are not permitted to serve as jurors on your case.

After the jurors are selected by the ADA and the defense lawyer, the judge explains the trial process to the jury. The ADA and the defendant's lawyer then make opening statements to the jury.

Most of the trial involves the presentation of evidence by each side. The prosecutor goes first, and offers evidence of the defendant's guilt, including testimony by witnesses. The defendant's side may then (but does not have to) present a defense, which may include testimony by the defendant and/or other witnesses.

When both sides have finished presenting their evidence, the defense lawyer and the Assistant District Attorney give their final speeches (summations) to the jury. The judge gives instructions to the jury. The jury then goes to another room to deliberate (consider the evidence).

In criminal cases, all the jurors must agree in order to reach a verdict of either guilty or not guilty for each charge. If any of the jurors disagree, and the jury is not unanimous (a "hung jury"), the judge may declare a mistrial. The prosecution will then decide whether to re-try the case.

If convicted, the defendant's final appearance in the trial court will be for the purpose of sentencing.

What Sentence May Be Imposed?

The sentences for abusers who are found guilty in domestic violence cases can vary widely. The punishment depends on factors such as the type of crime the defendant committed, the defendant's criminal record (or lack of one), anything that may make his acts appear less serious (mitigating circumstances), and whether the defendant was given and

accepted a plea bargain. Depending on all of these factors, a sentence can be as lenient as a conditional discharge or as severe as time in prison.

Sentences, both as a result of plea bargaining and trial, can include one or more of the following options:

- Conditional Discharge
- Batterers' Intervention Program
- Substance Abuse Treatment
- Permanent Order of Protection
- Restitution/fine
- Probation of up to three years (misdemeanor) and five years (felony)
- As little as one day in jail
- As much as life in jail (or the death penalty for certain types of murder).

**What Is
My Role in
a Criminal
Case?**

The District Attorney's office decides whether to prosecute, what charges to bring, and whether to accept a plea. The ADA may seek to have the abuser punished for his crimes even if the victim asks that the case be dropped. Nonetheless, you have a legal right to talk with the ADA before the case is disposed of by plea or trial.

As the victim, you are not an actual party to the case. The ADA prosecutes the defendant on behalf of the People of the State of New York.

However, you have an important role to play: In preparing the case, the ADA will interview you. You can help the prosecutor build a strong case by providing all possible evidence to prove that you were assaulted or abused in some way. This

evidence can include photographs of injuries, medical records, the names of any other people who know or saw what happened, and documentation and information about past abuse by the batterer.

If the case goes to trial, you will likely be called as a witness. This means you will be asked to sit in the witness box in the courtroom and answer the ADA's questions about what happened. You will also be asked questions by the defense attorney. In questioning you, the defense attorney will try to discredit your story, to raise doubts about your credibility, or to attack your character. This can be an emotionally difficult process.

The trial itself may not be the only time you are called as a witness. There may be pre-trial hearings in the case. If there is a felony charge, you may need to testify before a grand jury. If a guilty plea is entered or if your abuser is found guilty at a trial, someone from the probation department will speak to you to help determine what sentence to recommend to the judge.

Therefore, you should be prepared to appear in court on several different days. You should arrange to be able to spend time away from your job or other duties.

Will I Lose Pay or be Penalized at Work for the Time I Take Off to Go to Court? New York State law requires employers to allow time off for victims or witnesses to go to court in domestic violence cases. You must tell your employer at least a day in advance if you need time off to appear in court or do other things related to your case. If you give at least one day's prior notice, your employer must give you the time off, although your employer is not required to pay you for the time off. But you can use any personal leave or vacation time that you have.

**Are There
Any Tips on
Being a
Better
Witness?**

The Assistant District Attorney will meet with you to discuss the case and go over your testimony. Other than your domestic violence advocate or attorney, **you have an absolute right to refuse to talk to anyone else about the case.** If you do (for example, speaking with the abuser's attorney or with his or her friends), what you say can be used against you later in court.

When you are in the courtroom, your appearance will affect what the judge and jury think of you and of the credibility of your complaint. Dress neatly.

Your conduct in court will also influence the judge and jury. Sit straight, don't chew gum or do anything else distracting, and speak up loud and clear.

Remember it is okay to admit that you don't know or don't remember the answer to a question. "I don't know" or "I don't remember" is a perfectly acceptable answer.

Do not answer a question if you didn't hear it or didn't understand it. Don't be afraid to speak up and say you don't understand. You can always ask for the question to be repeated or stated differently.

Don't be afraid of the jury. *Look the jury in the eye and simply tell the truth.*

Keep your cool. A defense attorney may say bad things about you. A lawyer may try to intimidate you. Don't lose your temper or get drawn into an argument with the defense attorney. This can make you look bad. You can look good by being polite.

Sometimes, a defense lawyer may ask you if you have talked

to anybody about the case. There is nothing wrong or illegal about talking to people about the case. It is perfectly normal to do so, so just tell the truth.

If your testimony takes a long time, you can ask the judge for a break. You can take a break to go to the bathroom if you need to. You can ask for water, or whatever else you need.

Eat before going to court, so you can concentrate and not feel hungry.

The best way to feel comfortable in court is to prepare in advance. Talk to your attorney or advocate. Think about what the defense lawyer might ask you and how you would like to answer. Do not be afraid to show honest pain and suffering. There is nothing bad about crying on the stand if you are sad. After all, you want the jury and judge to understand how this has affected you.

Get used to the idea that the defense lawyer may try to intimidate you or say bad things about you. These are “scare tactics” to make you look bad. Don’t let them scare you. After all, *you are not the person on trial.*

**What Are
My Rights
as a Victim?**

- The District Attorney is required by law to keep you informed about arrest, arraignment, pre-trial release, plea agreements, trial, and sentencing. **You have a right to know which Assistant District Attorney (ADA) is handling the case. If you are not hearing from that ADA, you have a right to call the office and ask for information.**
- **When you first talk to the police or the District Attorney’s office, you have a right to tell them you**

want them to seek a **Temporary Order of Protection**.

- **You also have a right to ask the ADA to seek a Permanent Order of Protection** (or any other sentence option) as part of the abuser's sentence. The judge may decide not to issue an Order of Protection, but it will be considered.
- Prior to the defendant's sentencing, the ADA must give you a "request to be notified" form. By completing this form and signing it, **you order the State Department of Correctional Services (which runs the State's prison system) to notify you when when the inmate designated in the form is paroled, released, given work release, or has escaped.**
- **You have a right to compensation ("restitution") for any costs that your abuser caused or any other costs which resulted from the crime.** To get restitution, the ADA must ask the judge for it. If you feel you are entitled to restitution, make sure to tell the ADA to ask the judge for it.
- **If you are physically injured as a result of the crime, you are eligible for some compensation for out-of-pocket losses** (counseling, rehabilitation, medical expenses, shelter, loss of earnings) from the New York State Crime Victims Board (phone number listed in Appendix IV).
- **You have a right to file a victim impact statement in many types of cases.** This is your statement of the harm your abuser caused to you. The judge can consider your statement in deciding on the defendant's punishment. In a felony case, you have a right to appear in court and make an oral statement before sentencing. You should talk to the ADA handling the case about this.

47 Appendix I:

A Personal Safety Plan

51 Appendix II:

Eleven Things a Good Attorney Should Do

57 Appendix III:

Glossary

64 Appendix IV:

Chart: Comparing Family and Criminal Courts

APPENDIX I. A PERSONAL SAFETY PLAN

It is a good idea, no matter what your current situation is, to plan in advance for ways to protect yourself. Only you can decide what is the best safety plan for you. However, to give you ideas, here is a sample safety plan:

SAMPLE SAFETY PLAN

**Being
Prepared for
an Explosive
Incident**

- A. If an argument seems unavoidable, try to have it in a room or area that has access to an exit and not in a bathroom, kitchen, or anywhere near weapons.
- B. Practice how to get out of your home safely. Identify which doors, windows, elevator, or stairwell would be best.
- C. Have a packed bag ready and keep it in an undisclosed but accessible place in order to leave quickly.
- D. Keep your purse and car keys ready and in a convenient place in order to leave quickly.
- E. Teach your children how to use the telephone to contact the police and fire department in case of emergency.
- F. Identify a neighbor you can tell about the violence and ask that they call the police if they hear a disturbance coming from your home.
- G. Devise a code word to use with your children, family, friends, and neighbors when you need the police.
- H. Decide and plan for where you will go if you have to leave home (even if you don't think you will need to).
- I. Use your own instincts and judgment. If the situation is dangerous, consider giving the abuser what he wants to calm him down. You have the right to protect yourself until you are out of danger.
- J. Always remember: **You don't deserve to be hit, threatened, or abused!**

Being Prepared in Case You Have to Leave

-
- A. Open a savings account in your own name to increase your independence. Think of other ways to increase your independence, such as getting credit cards in your own name, taking classes, getting job skills, etc.
 - B. Leave money, an extra set of keys, copies of important documents, and extra clothes with someone you trust so you can leave quickly.
 - C. Find out who would be able to let you stay with them or lend you money.
 - D. Keep the shelter phone number close at hand and keep change or a calling card on you at all times for emergency phone calls.
 - E. Rehearse your escape plan and, if appropriate, practice it with your children.
 - F. Call a domestic violence program and get help making plans.
 - G. Review your safety plan often in order to plan the safest way to leave your batterer. **Remember—leaving your batterer is the most dangerous time!**

Being Safe in Your New Home

-
- A. Change the locks on your doors as soon as possible. Buy additional locks and safety devices to secure your windows.
 - B. Discuss a safety plan with your children for when you are not with them.
 - C. Inform your children's school, day care, etc. about who has permission to pick up your children. Provide them with copies of custody and protection orders and emergency numbers.
 - D. Inform neighbors and landlord that your partner no longer lives with you and that they should call the police if they see him near your home.

**Safety With
an Order of
Protection**

-
- A. Keep your Order of protection with you at all times.
 - B. Call the police if your partner breaks the Order.
 - C. Think of alternative ways to keep safe if the police do not respond right away.
 - D. Inform family, friends, and neighbors that you have a protective Order in effect.
 - E. Give copies of your protection Order to police departments in your community and those where you visit friends and family.
 - E. If you lose your protection Order, or your partner destroys it, get another copy from the court that issued it.
 - G. Call a domestic violence program with questions about how to enforce an Order or if you have trouble getting it enforced.

**Safety on
the Job and
in Public**

-
- A. Decide who at work you will inform of your situation. This should include office or building security. (Providing a picture of your batterer can be helpful.)
 - B. Arrange to have someone screen your telephone calls if possible.
 - C. Devise a safety plan for when you leave work. Have someone escort you to your car, bus, or train. Use different routes to go home if possible. Think about what to do if something happens while going home. Lock your car doors.
 - D. Change your patterns. Avoid stores, banks, doctors' appointments, laundromats, and other places where your partner may find you.

**Your Safety
and
Emotional
Health**

-
- A. If you are thinking of returning to a potentially abusive situation, discuss it with someone you trust before deciding.
 - B. If you have to communicate with your partner, determine the safest way to do so.
 - C. Have positive thoughts about yourself; be assertive with others about your needs.
 - D. Decide with whom you can talk freely and openly and get the support you need.
 - E. Plan to attend a women's or victim's support group to gain support from others and learn more about yourself and the relationship.

**APPENDIX II.
ELEVEN THINGS A GOOD ATTORNEY SHOULD DO**

In a criminal court, the case against the abuser is handled by a lawyer from the District Attorney's office, who represents The People of the State of New York. You do not have a lawyer.

But in the Family Court, *you* are the petitioner, meaning that you or your lawyer handle your case. And even if the District Attorney has filed charges against your abuser in a criminal court, you may still need legal advice on how best to protect yourself from further abuse.

If you are fortunate enough to be able to afford a lawyer, you will, of course, want to select the best one for you. Indeed, choosing a lawyer may be one of the most important decisions you make. You may need to work with your attorney for a long time, perhaps many years if children are involved.

If you can't hire your own attorney, and instead are assigned one by the court, it is still important that you have an idea of what your lawyer should do for you. With this knowledge, you will be able to insist that your lawyer give you the best possible legal representation.

In recognition of the importance of selecting the right lawyer, and to help you make sure that your lawyer is doing a competent job, we present the following list of 11 things you should expect a good attorney to do:

1. Your lawyer should

DISCUSS CONFIDENTIALITY.

Your lawyer is required to maintain confidentiality, meaning that what is discussed stays between you and the attorney. To further ensure confidentiality, you and your attorney may decide that the attorney will not call you at home, and instead make alternate plans for how you will be reached. If you are unsure how much of your private life to tell an attorney, ask questions before sharing your information. For example, “Will you tell anyone if I had a mental health problem and had seen a psychologist?”

2. Your lawyer should

GET A HISTORY OF THE ABUSE.

Your lawyer must be able to tell what kind of abuse has been occurring, whether it is economic, sexual, physical, or emotional. It may be difficult for you to tell the lawyer what happened. If it is easier to show the evidence of abuse (injuries, photos, recorded phone messages, apologetic notes from the abuser, etc.), then start with that. The attorney should know what happened before, during, and after the most recent abuse. If you have information you think might be relevant that the attorney does not ask for, then tell him/her about it. Even if it does not seem important at the time, it may become so later. So tell your lawyer *everything*. For example, “I know this may sound strange, but does it matter that I’m not allowed to have my own money or checkbook?”

3. Your lawyer should

TELL YOU THAT HE/SHE BELIEVES YOU.

You should feel confident that the attorney believes what you are saying. If you think your lawyer does not believe you, then this is not the attorney for you. You might come right out and ask, “Is it hard for you to believe what I am telling you?”

4. Your lawyer should

ASSESS THE LEVEL OF THE DANGER.

Your attorney should ask about guns and other weapons within the family or household, attempted or threatened suicides, and whether the abuser has ever abused the children or others. The attorney should have or be able to obtain the names of shelters, domestic violence counselors, and other local support resources available to assist you. If you need other resources, you could ask your attorney, “Do you have the names of any police, clergy, or others in my neighborhood who have expertise in dealing with domestic violence issues?”

5. Your lawyer should

ASK FOR DETAILED ANSWERS.

For example, “What did you have on when you drove around the block for 45 minutes to get away from your spouse?” If you were wearing your pajamas on a January morning at 3 a.m., it will be important to point this out when you seek an Order of Protection. Detail is important because it allows the lawyer to piece together what happened. An attorney should never assume anything from what you say. For example, the lawyer who assumed you were fully dressed when you drove around for 45 minutes wouldn’t know that you feared your spouse more than you feared the risks attached to driving in the middle of the night in bedroom attire. That is why it is important to give explicit detail. In court it will be necessary for the attorney to have details in order to portray the events for a judge. The attorney may ask you some potentially embarrassing questions, but just remember that if the attorney knows the facts ahead of time, there will be no surprises at trial.

6. *Your lawyer should*

ESTABLISH A TIME-LINE OF THE ABUSE.

It is important for all victims to establish a time-line of the abusive conduct. The attorney may ask you to keep a log of events that occur—a copy of such a log should be kept at the lawyer's office; and the attorney should ask you to provide names, addresses, and telephone numbers of witnesses to long-term and current abuse. Ask your attorney, "Do you want to see my diary or the strange letters he has written to our son?"

7. *Your lawyer should*

GET AN INTERPRETER IF HELPFUL.

If you and your attorney cannot understand each other, the attorney should come up with a way to solve this problem. Tell your attorney if you don't understand what he/she is saying to you. It is a waste of your time if you cannot understand your lawyer. (Caution: avoid any interpreter who might either be biased against you or who doesn't understand what domestic violence is all about.)



8. *Your lawyer should*

CAREFULLY EXPLAIN THE SYSTEM AND THE PLAYERS.

Your attorney should explain the system to you. After the attorney explains the system, if there is anything else about the court process or the system that you would like him/her to explain, ask the attorney to do so. You could say, "I listened to what you have told me, but I still don't understand why I have to go to the hearing. Is there any way you could do it without me?"

9. *Your lawyer should*

EXPLAIN DOMESTIC VIOLENCE.

Your lawyer should explain to you the laws regarding domestic violence and what domestic violence is. Sometimes you

may not realize that some things your abuser has done are against the law. Laws prohibit such acts as threats, slaps, kicks, harassing phone calls, stalking behavior, and forced sexual acts between partners or spouses. Your attorney should be able to explain how the law might be able to help you.

10. Your lawyer should

TRY TO UNDERSTAND WHAT YOU ARE GOING THROUGH, BUT SHOULD REALIZE THAT ONLY YOU REALLY KNOW.

Your lawyer has not been through what you have been through, and will never know *everything* about your case. To provide your attorney with the best possible understanding of your situation, it is important for you to tell your attorney what you are going through, what you have been through, and how you feel about your life and your abuser. Your attorney might try to understand by asking questions like, “Do you ever feel like you’re walking on eggshells when he comes through the door at night?”

11. Your lawyer should

SPEAK IN TERMS THAT A NON-LAWYER LIKE YOURSELF CAN UNDERSTAND.

Your attorney should use everyday language to ensure that you two understand each other. The attorney should not speak in terms that only an attorney would understand. If the attorney is using language you do not understand, you could state, “I have been through a lot recently; could you just tell me plain and simply what my options are?”

Adjournment in Contemplation of Dismissal (ACD or ACOD):

The case is adjourned, and the charge is automatically dismissed if the defendant is not arrested again within a set period of time (often six months or a year). Used primarily for first-time offenders.

Appearance Ticket: A ticket given by the police to a person charged with an offense, which tells the person to appear in court on a particular day. The police give appearance tickets instead of arresting the offender in minor cases.

Arraignment: The defendant's first court appearance, at which he or she is formally advised of criminal charges against him or her.

Assistant District Attorney: The lawyer from the District Attorney's Office who, in a criminal case, appears in court to prosecute the defendant.

Bail: Money or other security given to a court in exchange for the release of a person in custody to assure his or her appearance at future court proceedings.

Bail Bondsman: A private businessman who provides loans to cover bail amounts.

Batterer's Intervention Program: A program in which batterers are counseled to help them stop their abusive behavior. Many experts question whether these programs work.

Bench Trial: A trial conducted with the judge serving in place of a jury as the finder of fact.

Beyond a Reasonable Doubt: The standard of proof in a criminal case. If the jurors believe there is any reasonable doubt about whether the person is guilty, they cannot convict.

Conditional Discharge: Another term for an “Adjournment in Contemplation of Dismissal” (see above).

Confidentiality: Your lawyer’s duty not to tell other people what you told the lawyer in private.

Continuance: A postponement of a case to a later date because a party to the case was unavailable on the scheduled date.

Cross-examination: Questioning of a witness for the prosecution by a defense attorney, or questioning of a witness for the defense by a prosecuting attorney.

Defendant: The person accused of criminal conduct.

Defense Attorney: The lawyer who represents the person who is accused of committing a criminal act (the defendant or respondent).

Deliberate: In a criminal trial, the process by which the jury decides whether the defendant is guilty beyond a reasonable doubt.

Department of Probation: See “Probation (Department of)”.

Dispositional Hearing: In Family Court, a hearing at the conclusion of which Orders are issued by the court.

District Attorney: The county official whose office represents the People of the State of New York in criminal prosecutions. An Assistant District Attorney usually represents the District Attorney's Office in prosecuting criminal cases.

Fact-finding Hearing: In Family Court, a hearing to determine whether the allegations made in the petition are true.

Family Member: You must be a "family member" to file a petition against an abuser in Family Court. For this purpose, "family member" includes anyone who is married to, divorced from, related by blood, or related by marriage to the abuser. "Family member" also includes unrelated persons who have a child in common, whether or not they have ever resided together.

Family Offense: In Family Court, any violent or threatening action committed by one family member against another, when such actions constitute disorderly conduct, harassment, menacing, reckless endangerment, assault, or attempted assault. This is the type of case you bring when you are seeking an Order of Protection.

Felony: A crime which is punishable by a prison sentence of more than one year.

Grand Jury: Only in felony cases, a 23-member panel of citizens which decides whether there is enough evidence to bring the defendant to trial.

Indict (pronounced "indite"): To decide that there is enough evidence to bring the defendant to trial. If it decides this, the Grand Jury issues an "indictment."

Intake Part: In Family Court, the courtroom where you first go to see a judge in a Family Offense case.

Intake Unit: In some counties, the place in the Family Court where you go to file a Family Offense petition.

Misdemeanor: A crime which is punishable by a sentence of up to one year in prison.

Mitigating Circumstances: Any factors in a case that would make a criminal action more understandable, justifiable, or acceptable.

Order of Protection: An Order by a judge directing that a person refrain from committing acts against a particular person, including harassment, disorderly conduct, menacing, reckless endangerment, and assault. An Order of Protection may also direct the respondent to stay away from the home, school, or place of employment of the petitioner and other designated persons (e.g. children). An Order of Protection may include a number of other provisions as well.

Permanent Order of Protection: An Order of Protection given by a judge at a dispositional hearing. It is not, in fact, permanent. It is usually in effect for a year, but can be made to be in effect for up to three years in certain cases.

Petition Clerk: (In New York City) A court clerk who assists litigants who do not have an attorney by preparing their petitions for filing and by explaining the proceedings that are available to them in Family Court. The petition clerk also files petitions and makes sure that the petition is referred to the appropriate judge.

Petition Room: (In New York City) The place in the Family Court where most petitioners in Family Offense cases first go to initiate a case.

Petitioner: The person or agency who files a petition and initiates a case in Family Court.

Plea: In a criminal court, the defendant's answer to the prosecution's charges against him or her: either guilty or not guilty.

Plea Bargaining: When the District Attorney's office negotiates with the defendant to get the defendant to plead guilty to a less serious charge.

Pre-Sentence Investigation: An investigation of facts about the defendant and his/her past, made by the Probation Department and submitted to the judge for consideration before sentencing.

Probable Cause: A belief by the police that there is evidence that an offense has been committed. The police can arrest someone (and in some cases are required to arrest someone) if they have probable cause to believe the person has committed a crime.

Probation: A sentence that places a person found guilty of a crime under the supervision of a probation officer for a definite period of time.

Probation (Department of): A government agency that is in charge of various court-related duties, including the intake of Family Court cases in counties outside of New York City, the

overseeing of defendants who receive a sentence of probation, and the conduct of pre-sentence investigations.

Probation Intake Unit: In Family Courts outside of New York City, the branch of the Department of Probation which performs functions similar to those of petition clerks in New York City (see above).

Probation Officer: An employee of the Department of Probation who carries out the department's various duties.

Prosecute: To try to prove in a criminal court the guilt of the defendant.

Prosecutor: The employee of the District Attorney's Office (an Assistant District Attorney) who prosecutes a case.

Release on Recognizance: A release of the defendant without bail, pending a trial or other action.

Respondent: In Family Court, the person or agency against whom a petition is filed, and who responds to the petition.

Summations: In a criminal trial, the final statements by the prosecution and the defense to the jury (or judge). Usually, the lawyers use the summations to review the argument for their side and to make a final statement as to why their side should prevail.

Temporary Order of Child Support: In Family Court, an Order of child support that a judge can grant to a petitioner immediately, on the first day the petitioner comes to court, and which is good until the date the respondent is scheduled to appear for the fact-finding hearing. A Permanent Order of

Child Support cannot be issued until the respondent appears in court to have an opportunity to argue against the Order.

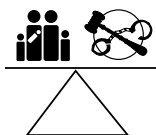
Temporary Order of Protection: An Order of Protection that a judge can grant to a person immediately, on the first day the person comes to court, and which is good until the date the respondent or defendant is scheduled to appear in court.

Verdict: In a criminal case, the decision by the jury (or judge) as to whether the defendant is guilty or not guilty.

Victim Impact Statement: In New York State, before a defendant is sentenced for a crime, the victim has a right to have the judge read a written Victim Impact Statement. This is a statement by the victim of the effect the crime has had on him or her. The judge can take the statement into consideration in deciding on the sentence. If you want to submit a Victim Impact Statement, you should speak to the assistant district attorney handling your case.

Violation: A minor offense, for which a defendant can be sentenced to a fine or up to 15 days in jail.

Violation of Order of Protection: When the abuser breaks any of the requirements on the Order of Protection. For example, if he comes to your house when the Order prohibited that. A person can be sentenced to as much as seven years in jail for violating an Order of Protection.



WHICH COURT SHOULD I USE?

	FAMILY COURT
Can I use this court?	You must be legally married to, divorced from, or otherwise related by blood or marriage to the abuser. You can also use this court if you have a child in common with the abuser, even if you have never lived together.
How does a case start?	You go to court and file a petition.
How do I get an Order of Protection?	You ask for the Order of Protection in your petition.
What can the court do?	Issue an Order of Protection; decide on custody and child support; order the abuser to compensate you for expenses; require abuser to attend a batterers' intervention program.
What is my role in the case?	You are in charge of the case. You are responsible for filing a petition, attending and testifying at court hearings, and asking the judge for the relief you need. You can do this with the help of a domestic violence advocate. You also have a right to use an attorney; in most cases, people who cannot afford an attorney are entitled to have one appointed by the court.

FAMILY vs. CRIMINAL COURT**CRIMINAL COURT**

Cases can be brought regardless of whether the victim is related to the abuser.

You call the police, or go to the police or District Attorney's office to file a complaint and have the abuser arrested.

You tell the police or the Assistant District Attorney you want an Order of Protection, and he or she requests this from the judge.

Issue an Order of Protection; prosecute the abuser; punish with probation, fine, or jail; order the abuser to reimburse you; require abuser to attend a batterers' intervention program.

The District Attorney's office is in charge of the case, and pursues the case on behalf of the People of the State of New York. You will be asked to give information to the Assistant District Attorney working on the case. You will not have to go to court unless there is a trial, in which case you may be called as a witness. You should be consulted before a sentence is made, and informed of all developments in the case. You need to call the attorney handling the case if you do not hear from him or her, to stay on top of what is taking place.

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