

New York State Coalition Against Domestic Violence
2004 Domestic Violence Handbook

Civil Law: Going To Family Court

Many victims of domestic violence have the option of going to Family Court, which is a civil court, to get a Family Court Order of Protection. Two things determine your eligibility to go to Family Court - your relationship to the abuser and the type of offense that has been committed against you. If you are legally married, legally separated or divorced from your abuser, related to your abuser by blood or marriage, *or* if your abuser is the parent of one or more of your children, even if you are not and have never been married to your abuser, then you can seek relief from Family Court. If you are in a gay or lesbian relationship, or if you are unmarried and pregnant with your abuser's child, but have no other children with him, you cannot go to Family Court.

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

There are some advantages to going to Family Court:

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

- An Order of Protection from Family Court can do a lot more than order the abuser not to harm you. As in criminal court, a Family Court Order can order the abuser to move out of your home, order him to stay away from your workplace, school or home, order him not to call you on the telephone, and order him to pay restitution. In addition, an Order of Protection from Family Court can give you temporary custody of your children, require the abuser to pay child support, and establish rules for the use of certain personal property, including the family car. An Order from Family Court can also establish visitation arrangements so that you do not have to see your abuser when he spends time with the children.
- You don't need as much evidence to prove your case in Family Court as you need in criminal court. While it is always helpful to bring evidence such as photographs of injuries, police reports, or medical records, if the judge believes what you say even slightly more than what your abuser says, you will probably get an Order of Protection.
- An Order of Protection from Family Court can last from two to five years, and you can ask for it to be extended when it expires.

There are some disadvantages to using the Family Court:

- The burden of dealing with the legal system is on you, not on a prosecutor. In order for your case to proceed, you are the one who must go to court and tell your story to a judge. There is paperwork to complete and you may have to spend a lot of time waiting when you go to file your petition and when you return to Family Court for your court appearance. You can have a lawyer advise you and speak for you in court, but you may need to pay for this representation because free legal services can be difficult to get if you have a job or receive some income.
- A Family Court judge cannot put your abuser in jail even if the abuser admits that he did the things you described in your petition. A Family Court judge can only order an abuser to jail if he violates an existing Order of Protection.

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

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