

Civil Law: Going To Family Court

Going to Family Court

Many victims of domestic violence have the option of getting a civil order of protection from either Family Court or Supreme Court. Supreme Court orders of protection involve only parties that are or have been married to each other. Family Court requires two different conditions to determine your eligibility to use Family Court – your relationship to the abuser and the type of offense that has been committed against you.

Your relationship to your abuser

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 of more of your children, even if you are not and have never been married to your abuser, then you can take your case to Family Court. If you are in a gay or lesbian relationship, or if you are unmarried and pregnant by your abuser, but have no other children with your abuser, you cannot go to Family Court. * (Please check with the local Family Court for any 2008 Legislative Changes with Family Court Access).

The type of offense committed against you

A family offense could be one or more acts that are defined under the law as Disorderly Conduct, Harassment in the First Degree, Harassment in the Second Degree, Aggravated Harassment in the Second Degree, Stalking in the First Degree, Stalking in the Second Degree, Stalking in the Third Degree, Stalking in the Fourth Degree, Menacing in the Second Degree, Menacing in the Third Degree, Reckless Endangerment, Assault in the Second Degree, Assault in the Third Degree or Attempted Assault or Criminal Mischief, between people who are legally married, legally separated, divorced, or related by blood or marriage, or who have a child in common. 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 the different categories of offenses. **If you bring a complaint to Family Court that 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, attorney, 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.
- A Family Court order can do 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; to stay away from your workplace, school or home; to not call you on the telephone; and to pay restitution. But it can also give you temporary custody of your children, require the abuser to pay child support, establish rules for the use of certain personal property – including the family car, and establish visitation arrangements.
- 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 more than what your abuser says, you will probably get an order of protection.
- A Family Court order 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 system:

- 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. You must complete all the paperwork and you'll need to have the time to wait at the court when filing your petition and when you return for your court appearance.
- You need to be present for every court date.
- 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 or lawyer or on your own. If you cannot afford an attorney, you may be entitled to one depending on your income. If you believe you are entitled to an attorney 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 go to or prepare for court alone. Domestic violence program advocates, and sometimes staff and volunteers at the court, can help guide you through the necessary steps.