

New York State Coalition Against Domestic Violence 2004 Domestic Violence Handbook

Criminal Law: Going To Criminal Court

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

You should know that if your abuser is arrested, he may be kept in jail only overnight or for just a few hours, so having a safety plan and putting it into action is a good idea (see *Safety Planning*). If there is an arrest, your abuser will be charged formally at an *arraignment*, where the judge may set *bail* or allow some kind of *conditional release*. If you are present at the arraignment, you can request a *Temporary Order of Protection* if you don't already have one. You can also ask the police to put your request for a Temporary Order of Protection in their police report. It is important to tell the officer if the abuser has access to weapons such as a gun, rifle or other firearms. It is up to the judge, however, to decide whether a Temporary Order of Protection is given to you, or whether the weapons and permits are to be removed. If you do get one, it is *temporary* - it will be in effect only from the time your abuser is served with the Order until the court decides the case. If you want a final Order of Protection, you need to appear on the trial date set by the court and specifically ask for one. A final Order of Protection is sometimes called a *permanent* Order. However, this is misleading since all Orders contain some time limit.

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

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

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

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

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

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

Even if your abuser is found guilty in a criminal court proceeding, he will not necessarily go to jail. In fact, it's rare for abusers to spend any length of time in jail. If your abuser has never been convicted of an assault crime before - and sometimes even if there are other misdemeanor convictions on the record - the court may decide to *adjourn in contemplation of dismissal* (sometimes called "ACOD" or "ACD"). This means that if your abuser does not commit another offense within a stated period of time (usually six months to one year), the court will dismiss the charge entirely and wipe the criminal record clean.

There are some advantages to going to criminal court:

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

But criminal prosecution also has some disadvantages:

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