

Custody and Visitation

Unless you are in the middle of a divorce or legal separation in Supreme Court, if you have children in common with your abuser and are seeking custody you must use Family Court. You can petition for custody of the children at the same time you complete your petition for an order of protection. You may also request temporary custody of your children, so that you may have custody of them while you wait for your court date. Be sure to request temporary custody of your children if you are asking that the abuser be removed from the home and/or you are afraid that your abuser may run off with the children. Without a temporary custody order, it can be very difficult to bring your abuser and children back to the court in your county. If you do fear that your abuser will take the children away, be sure to state this in your petition. Unless your abuser has caused serious physical injury to your children, it is likely that he will be granted visitation rights. You may, however, request supervised visitation. If there is no formal supervised visitation center in your county, you can ask the judge to order someone you trust to supervise this visitation.

Abusers commonly use visitation time as an opportunity to threaten or intimidate their victims. Whether or not the visitation is supervised, you can request that the order state that visitation pick-ups and drop-offs happen someplace other than your home. A public place, like the lobby of your local police station, is an example of an alternate place to exchange the children.

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

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

The "Law Guardian" is an attorney for children in Family Court proceedings and Supreme Court custody matters. This attorney is called a "Law Guardian". The Law Guardian's responsibility is to make recommendations to the court about the child's concerns and suggest case remedies that would benefit the child.