



Orders of Protection in New York

What They Are, How to Get One, and What Happens Next

An Order of Protection (OOP) is a court order that restricts someone's behavior toward you and your family. It is not a criminal conviction, but violation of an OOP can result in criminal prosecution. This guide explains OOP basics under New York law.

1 — What Is an Order of Protection?

An Order of Protection is a civil court order that legally prohibits a respondent from engaging in specific conduct toward you and protected persons (typically your children). The order is enforceable by police and carries criminal penalties for violation.

- Who it protects: You, your children, household members, and anyone named by the court.
- What it orders the respondent to do/not do: Stay away from you, your residence, workplace, and school (full stay-away); refrain from harassing, threatening, or assaulting you (limited order); not have contact except through attorney or by court permission.
- Duration: Temporary OOP (ex parte, issued immediately) lasts until the return date. Final OOP lasts up to 5 years for aggravated circumstances, or per court discretion.

2 — Types of Orders of Protection

Type	Description
Full Stay-Away Order	Respondent must remain away from your residence, workplace, school, daycare, and any location where you regularly appear. All contact prohibited except through attorney.
Limited/Refrain Order	Respondent may have contact but must refrain from harassment, threats, physical contact, or disruptive conduct. Typically allows communication about children.
Temporary Ex Parte OOP	Issued same day without respondent present. Based on your testimony alone. Lasts until the return date (typically 5–14 days).
Final OOP After Hearing	Issued after both parties appear and testify. Both you and respondent present evidence. Final OOP lasts up to 5 years or longer for aggravated circumstances.
Family Court OOP (FCA § 842)	Filed in New York Family Court for family offense petitions (assault, harassment, menacing, stalking, disorderly conduct within family relationships).
Supreme Court OOP (CPLR § 61)	Filed in Supreme Court as part of divorce, separation, or custody proceeding. Same remedies as Family Court OOP but integrated into family law case.



3 — Grounds for an Order of Protection

An Order of Protection can be issued if the respondent commits a family offense under New York Family Court Act § 812. These include:

- Assault (intentional physical injury; recklessness causing physical injury)
- Harassment (intent to harass, alarm, or annoy; repeated unwanted contact; offensive remarks; threats; obscene calls/texts/emails)
- Menacing (placing another in reasonable apprehension of physical injury; displaying a weapon))
- Reckless Endangerment (behavior that creates substantial risk of serious injury)
- Strangulation/Choking (physical act of restricting blood/air; no injury required)
- Stalking (repeated, unwanted behavior intended to alarm, annoy, or place in fear; surveillance; monitoring; pursuing; following)
- Disorderly Conduct (engaging in fighting; tumultuous conduct; threatening behavior; using abusive language in public; making threats of injury or property damage)
- Aggravated harassment (use of communication device, social media, or dating apps to harass repeatedly; cyberstalking))
- Violations of prior OOP (contacting you, appearing at work/school, sending gifts, any breach of existing order))

4 — How to Get an Order of Protection

There are two pathways to obtain an OOP in New York:

Pathway 1: Family Court Petition for Family Offense

- File a family offense petition in New York Family Court, typically in your home county.
- Include a detailed sworn statement describing the acts, dates, witnesses, and harm.
- Appear before a judge; you testify. The judge may issue a temporary ex parte OOP same day if there is reasonable cause to believe a family offense occurred.
- The respondent is served with the petition and temporary OOP; a return date is set (typically 5–14 days).
- At the return date, both you and the respondent testify. The judge decides whether to issue a final OOP based on a preponderance of the evidence (more likely than not).

Pathway 2: OOP Sought Within Divorce or Custody Proceeding (Supreme Court)

- File a divorce, separation, or custody petition in Supreme Court.
- Request an OOP as an ancillary remedy in the same proceeding.
- The same judge overseeing divorce/custody will also rule on the OOP.
- Temporary OOP can be issued ex parte on the initial appearance.
- Final OOP is decided at trial or by agreement between the parties.



5 — The Hearing Process

What happens at the return date hearing:

- You testify first. Describe the abuse, threats, harassment, or assault. Provide dates, witnesses, injuries, and the effect on you and your children.
- The respondent has the right to cross-examine you and present their own testimony and witnesses.
- You may present evidence: photos of injuries, medical records, hospital records, police reports, text messages, emails, voicemails, social media screenshots, and witness testimony.
- The judge applies the *preponderance of the evidence* standard (more likely than not that a family offense occurred).
- If the judge finds abuse, a final OOP is issued.
- Duration and scope are within judicial discretion: up to 5 years for most offenses; longer for aggravated circumstances (prior abuse, weapons, strangulation, serious injury).

6 — Violations and Enforcement

If the respondent violates an OOP, several remedies are available:

- What constitutes a violation: Any contact (phone, text, email, social media, through a third party, showing up); any approach to your residence or workplace; giving gifts; stalking; harassment; threats; assault.
- Criminal consequences: Violation of an OOP is a crime (Penal Law § 215.51). First violation is a Class B misdemeanor (up to 3 months jail, \$500 fine). Repeat violations are more serious.
- Calling police: If the respondent violates the OOP, call 911. Provide a copy of the OOP. The police may arrest the respondent on the spot.
- Right to arrest without warrant: Unlike many crimes, police may arrest for OOP violation without witnessing it if they have reasonable cause and a copy of the OOP.
- Criminal prosecution: The District Attorney prosecutes OOP violations. You cooperate as a witness; you do not hire a private prosecutor.
- Civil enforcement: You may file a violation petition in court seeking modification of the OOP or contempt sanctions.

7 — Orders of Protection and Divorce

An OOP significantly affects divorce proceedings and parenting arrangements:

- Custody implications: A final OOP is strong evidence of danger and abuse. Courts often limit the restrained parent's unsupervised custody/visitation and may award you primary custody.
- Parenting time: If the OOP prohibits contact, how do you exchange children? Courts often order supervised exchanges (at a neutral location or via a third party) or allow phone contact for parenting purposes only.
- Exclusive occupancy of marital home: A judge may order the abuser to vacate the home and award you exclusive use, even before the divorce is finalized. This does not affect property division later.



- Child support and spousal support: An OOP does not affect support calculations. However, contempt for violating an OOP can result in attorney fee sanctions.

8 — If You Are the Respondent

If someone has filed an order of protection against you, you have rights:

- Right to counsel: You have the right to an attorney. If you cannot afford one, you may request a public defender in some contexts, though OOP hearings are typically civil.
- Right to respond: At the return date, you may cross-examine the petitioner and present your own evidence and witnesses.
- Right to due process: The petitioner must prove their case by a preponderance of the evidence. You are presumed innocent until facts are proven.
- How an OOP affects custody: A final OOP against you is evidence of abuse and will likely reduce your custody/visitation. You may be limited to supervised visitation.
- Seeking modification or vacatur: If circumstances change or the order was issued in error, you can petition the court to modify or vacate it. Provide new evidence or changed circumstances.

9 — Frequently Asked Questions

Does an OOP go on my permanent record?

An OOP is a civil order, not a criminal conviction. However, it is recorded in the court system and may appear in background checks. If you later violate it and are convicted of the crime, that conviction does go on your criminal record.

Can children be included in the OOP?

Yes. You can request that the OOP protect your children as well. This means the respondent cannot contact, approach, or harass the children. The order typically specifies which household members are protected.

What if we live together and I want an OOP?

You can still file for an OOP. The court may order the respondent to vacate or establish separate sleeping areas pending trial. However, cohabitation is unusual in OOP cases; usually, the petitioner moves out for safety and then seeks the OOP to enforce the separation.

Can I still contact the respondent if we have an OOP for the sake of the kids?

The OOP typically allows contact for the purpose of parenting and child exchanges only. Text or email is preferred over voice calls. Do not discuss personal matters, grievances, or anything unrelated to the children.

What if I didn't do anything wrong and the OOP is false?

You have the right to appear at the hearing and defend yourself. Present evidence: alibis, witnesses, communications showing your version, etc. If the judge finds insufficient evidence, the OOP will be denied. If a temporary OOP was issued ex parte, you can challenge it at the return date.

How long does an OOP last?



A temporary ex parte OOP lasts until the return date (typically 5–14 days). A final OOP lasts up to 5 years for most offenses. For aggravated circumstances (prior abuse, weapons, strangulation, serious injury), the judge may extend it longer or make it permanent in New York.

Does an OOP affect child custody?

Yes, significantly. A final OOP is strong evidence of abuse. The court will likely grant you primary custody, restrict the respondent's visitation to supervised only, and may prohibit overnight contact with children. The OOP does not automatically change custody, but it heavily influences the custody determination.

What if the respondent violates the OOP?

Call 911 immediately. Provide the police with a copy of the OOP. The respondent can be arrested. Document the violation (record dates, times, who contacted you, how). Report repeat violations to the police and file a violation petition in court. Repeated violations lead to misdemeanor and felony charges.

In Crisis? Emergency Resources

New York State Domestic Violence Hotline: 1-800-942-6906 (24/7, confidential)

National Domestic Violence Hotline: 1-800-799-7233

Immediate danger: Call 911

Ready to speak with an attorney?

(716) 759-4529 pgw@weinrieblaw.com
www.weinrieblaw.com

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