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Introduction

This Handbook is intended to provide an overview of the services available to victims of domestic violence in New York State. The information included outlines the dynamics of domestic violence, the legal rights to which victims of domestic violence are entitled in New York State, the accessibility of domestic violence services, and safety planning.

New York State has responded to domestic violence by implementing laws and policies as well as developing a broad network of services designed to protect victims of domestic violence. Navigating the systems put in place to assist victims of domestic violence seeking legal and safety can be difficult especially while dealing with on-going abuse. Victims of domestic violence may be hesitant to access domestic violence services or civil or criminal justice systems for reasons related to the nature of the abuse or other reasons such as race, socioeconomic status, gender identity, immigration status, sexual orientation, age, ability, language/literacy, culture or others. The purpose of this Handbook is to describe services available and highlight victims' rights within these systems.

This Handbook provides up-to-date information about services in New York State and provides a general explanation of victims' rights. This is not meant to be a comprehensive list of laws, services or possible scenarios. Because each case is different, victims of domestic violence may choose to access services from a local program or attorney for information specific to their case.

What Is Domestic Violence?

NYSCADV defines domestic violence as a *pattern* of coercive behavior or tactics that is *culturally learned* and *socially condoned*. It can include physical, sexual, psychological, and economic abuse, and is perpetrated by one person against their intimate partner and/or against a member of the same family or household. Domestic violence does not discriminate based on race, socioeconomic status, gender identity, sex, sexual orientation, ethnicity, age, religious affiliation, or social location, but rather is perpetrated by abusers from all social groups. Victims of domestic violence have the right to legal relief and supportive services.

As illustrated in the “power and control wheel” on the next page, abusers engage in a variety of tactics with the goal of gaining and maintaining power and control in the relationship. The spokes of the wheel in the image above demonstrate the different tactics that abusers often use to maintain their perceived sense of power and control in a relationship. The types of abuse, as depicted on the wheel, include, but are not limited to, emotional abuse, psychological abuse, economic abuse, sexual abuse, isolation, stalking, and physical violence.

Emotional abuse can be characterized by name-calling, put downs, humiliation, and other acts that seek to lower a victim’s self-esteem.

Psychological abuse can be characterized by using threats, playing mind games, making the victim think that he/she is crazy, and other acts that instill fear in the victim.

Economic abuse can be characterized by preventing the victim from maintaining a job, controlling the money, bank accounts, or assets belonging to the family, making the victim completely responsible for bringing in income to the family, or other acts that set up a financial dependence in the relationship.

Sexual abuse can be characterized by forcing the victim to engage in non-consensual sexual acts, withholding sex, or other acts that exploit a victim’s right to express their sexuality.

Isolation can be characterized by preventing a victim’s contact with family and friends, re-locating a victim to a new location, controlling a victim’s interactions with people, or other acts that separate a victim from his/her support network.

Stalking can be characterized by repeated and unnecessary contact via text message, phone calls, email, or social media, planned appearances at places that a victim frequents, monitoring through the use of technology, or other acts that control a victim’s movement or induce fear.

Physical violence can be characterized by kicking, hitting, punching, pushing, withholding necessary medical attention, or other acts that inhibit a victim’s physical well-being.

It is important to note that abusers *choose* to perpetrate these acts. A victim’s behavior is not to blame for causing the abuse. While the dynamics of abuse in the relationship are the same for members of different communities or social groups, an individual’s experience, response, or needs in relation to the abuse can be unique depending on their identity or membership within a certain social group. Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) victims, victims of color, victims with varying abilities, immigrant victims, or refugee victims of domestic or teen dating violence may experience different forms of abuse, and barriers to service, directly related to their identity.



DOMESTIC ABUSE INTERVENTION PROJECT

202 East Superior Street
Duluth, Minnesota 55802
218-722-2781
www.duluth-model.org

Checklist

The following checklist may help you decide if you or someone you know is being abused. Please note: this is not an exhaustive list, just a guideline.

Does your partner:

- behave in an over-protective manner or become extremely jealous?
- threaten to hurt you, your children, pets, family members, friends or themselves?
- call, text, or email you at an excessive rate?
- deny you access to resources, such as: bank accounts, credit cards, or the car, or control all finances and force you to account for what you spend?
- prevent you from seeing family or friends?
- get suddenly angry or lose his/her temper?
- destroy personal property or throw things around?
- control how you dress?
- withhold medication or deny you access to health care?
- threaten to reveal your personal medical status or history?
- use your status within a religious community to harass, threaten, or intimidate you?
- participate in behaviors that make you question your mental health?
- threaten to expose your citizenship status or have you deported?
- use intimidation or manipulation to control you or your children?
- hit, punch, slap, kick, shove, choke or bite you?
- deny you access to your immigration documents?
- control where you go, when you can go, and who you are with?
- make you perform sexual acts that you did not want to do?
- control your expression of gender identity or sexual orientation?
- threaten to “out” you if you are lesbian, gay, bisexual, transgender, or queer?
- humiliate or embarrass you in front of other people?
- exploit his/her military status to prevent you from leaving?
- prevent you from completing your schoolwork or work tasks?

If you answered “yes” to any of these questions, you may be a victim of domestic violence. You are not to blame and you are not alone. Help is available.

Please note, for the purposes of this *Handbook*, we use the term “you” in place of “victim of domestic violence.”

Accessing Services from Local Domestic Violence Programs

Every county in New York State has at least one agency specifically designed to provide services for individuals affected by domestic violence and their children. These programs offer emergency 24-hour hotlines, information and referrals, education, support groups, advocacy and accompaniment.

Local domestic violence agencies provide both residential and/or non-residential services. Residential services include access to emergency shelters or safe dwellings. Traditionally, shelter stays are 90-days, but can be extended for up to 135 days. Some counties have lesser stays while safe dwelling usually have 30-day stays. Domestic violence shelters are different from other shelters in a variety of ways. Primarily, the location is kept confidential for safety purposes. Most shelters provide residents with a bedroom, personal hygiene products, food, and clothing as well as provide advocacy, support groups, give information and referrals as necessary or requested and provide emotional support to residents. Depending on whether it is a shelter or safe dwelling, there will be different numbers of staff available on site.

Non-residential services provide all those services requested by clients that do not include shelter. Some counties have comprehensive programs; in which one program provides both types of services and some counties have multiple agencies providing one or the other services. Both residential and non-residential programs have domestic violence advocates, specially trained in the dynamics of domestic violence. Advocates assist clients with a variety of services. Other services which may be available, including: public assistance, legal services, children's services, job readiness programs and housing assistance programs. Domestic violence services are voluntary.

What You Can Expect When You Call a Local Domestic Violence Program

If you are calling for information, you do not have to give your name. However, if you are calling to access services, shelter or non-residential services, you will be asked to complete an intake. In most cases, you will be asked for your name, your children's names (if applicable), the last incident of domestic violence, what services you are interested in accessing and any current court proceedings. You do not need to have called the police or initiated any legal proceedings in order to receive services from a local domestic violence program.

Domestic violence advocates have codes of confidentiality depending upon their professions. Attorneys with whom you speak are subject to attorney-client privilege and cannot reveal information that you give them unless you give them permission to reveal it or, in some cases, where you state a plan to seriously harm or kill another person. Social workers have their own rules of confidentiality as well, but they are mandated reporters of child abuse, which means that if they receive information that your children are being abused or neglected, they must make a report to Child Protective Services/ Administration for Children's Services (CPS/ACS). In turn, CPS/ACS must investigate the report.

NOTE: Prior to 2004, CPS/ACS could remove children from the custody of their parents if the children witnessed domestic violence in their homes. However, the New York Court of Appeals issued a landmark decision in *Nicholson v. Scoppetta* in October 2004, ruling that a parent may not be charged with neglect solely on the grounds that the parent is a victim of domestic violence and the child has been exposed to domestic violence. The courts cannot assume that every child exposed to domestic violence suffers harm or risk of harm as defined by the neglect law. Therefore, children cannot automatically be removed from the care of a domestic violence victim. The court has to assess what a reasonable parent would have done to protect the child under the circumstances.

Getting Help from an Advocate

An advocate from your local domestic violence program is a person who has been trained in the area of domestic violence and whose job is to provide support to you. This support can include but is not limited to:

- providing crisis intervention,
- providing individual case management,
- assisting navigation of the various systems that you may choose to access,
- helping you understand your options,
- providing you with appropriate referrals,
- working on safety planning and understanding that all decisions are made by you while keeping you and your children's safety and confidentiality a priority, and
- providing information about available support groups, counseling, advocacy, children's services, hotline assistance and transportation.

IMPORTANT NOTE: When choosing to get help, it is always important to understand that while advocates are available to you from systems other than domestic violence organizations - such as police victim witness liaisons, district attorney victim advocates, or court coordinators - they may not be held to the same confidentiality requirements as a domestic violence advocate.

In addition to giving you helpful information, domestic violence advocates may accompany you to court, the police station, the emergency room or the local department of social services to provide you support through the process. While you know what is best for you and your family, using these systems can be a difficult and confusing process.

This *Handbook* is intended to help you better understand your rights and the resources available to you. Getting help from an advocate who has experience working with victims of domestic violence and knows how to navigate the different systems can make the process less difficult than trying to handle it alone.

Safety Planning

As a victim of domestic violence, you understand your situation best. In your relationship, you have been taking your own steps to keep yourself and your children safe. Reviewing your **safety plan** with an advocate is an additional strategy that can help you think of other information that you may not have thought of while living in crisis. Whether you sought assistance from the court system, called the police, or have an existing order of protection, it is still important to consider a safety plan. Safety plans can be made for a variety of different situations, including:

- dealing with an emergency, such as when a physical assault occurs,
- continuing to live with a partner who has been abusive, and/or
- protecting yourself after you have ended a relationship with an abusive partner.

Important Note: Whether you are still in the relationship or not, there are certain measures that are helpful to consider in planning for your future safety. The following questions are intended to guide you while you are planning for your future safety:

- Where can you keep important phone numbers (police, hotline, friends,) for yourself and your children?
- If you need to leave your location (house, apartment, etc.) in a hurry, how will you be able to leave safely? If you are unable to leave the location, how can you get to a room where there are fewer things that can be used as weapons?
- What ways can you leave without alerting the abuser to your safety plan?
 - For example- can you take out the trash, walk the family pet, or go to the store?
- If you need a place to stay for a while, where can you go?
- Can you arrange to stay with family or friends in a crisis? Do you know how to contact the local domestic violence program in order to arrange for emergency shelter?
- Where can you keep a bag of necessary items so that you can grab them quickly?
 - For example: an extra set of car keys, money for public transportation, a phone card, a charged cell phone, important court documents, immigration documents, etc.
- Can you safely make copies of important documents and keys and find a safe place to keep them in case you decide to leave?
- Do your children know how to use the telephone to contact the police?
- Is there a “code” word you can use with friends, family and/or your children to alert them to call for help? A code word is word that you have predetermined to alert others that you need help. The code word should only be shared with those whom you trust.

Upon and After Leaving

It is important to understand leaving may not be the safest option for everyone -- you know what is best for you. An abuser may escalate or increase his/her tactics to threaten or harm you when you leave. During this time, abusers perceive themselves as losing control over their partners.

With that in mind, some precautions to think about when preparing to leave and after you have left can include:

- Going over your safety plan often.
- Opening a bank account or getting a credit card in your name.
- Getting a P.O. Box in your name.
- Changing the locks. Consider putting in stronger doors, smoke and carbon monoxide detectors, a security system and outside lights.
- Telling friends and neighbors that the abuser no longer lives with you. This does not mean that you need to disclose to them about abuse, but simply let them know the abuser is not living with you anymore.
- Telling people who take care of your children the names of people who are allowed to pick them up. If you have an order of protection that includes your children, give their teachers and babysitters a copy of it.
- Telling someone at work about what has happened. Ask that person to screen your calls. If you have an order of protection that includes where you work, consider giving your boss a copy of it and a picture of the abuser. Think about and practice a safety plan for your workplace. This should include going to and from work.
- Making copies of important documents and keys and finding a safe place to keep them in case you decide to leave. A safe place can include a hiding place in your home or with a friend, neighbor or family member whom you trust.
- If you are able, bring or store in a safe place, the following items:
 - Orders of Protection
 - Custody Orders, paternity documents
 - Identification for yourself
 - Birth certificates and Social Security cards
 - Marriage, separation or divorce papers
 - School and vaccination records
 - Money
 - Credit cards and/or account numbers
 - Keys - house, car, office, post office box, safety deposit box
 - Driver's license, car registration and title
 - Medications and prescriptions
 - Public Assistance Benefit Identification Card
 - Passport, "green card," work permit and any other immigration docs.
 - Several changes of clothes
 - Children's favorite toys, blankets
 - Lease/rental agreement, house deed
 - Mortgage payment book, current unpaid bills
 - Insurance papers
 - Address book
 - Pictures, jewelry, items of sentimental value
 - Pictures of injuries the abuser may have caused you
 - Any evidence that might help police investigating your case, such as threatening letters or phone messages

Accessing and Navigating the Criminal and Civil Legal System

The criminal and civil legal system is a widely used, yet complicated, response to domestic violence. For the purposes of this guide, the criminal and civil legal system is:

- police,
- criminal court
- family court
- Supreme Court

This Handbook will provide the reader with basic information as to how each of these components of the criminal and civil legal system can help a victim of domestic violence.

Terminology is important as well as confusing. Throughout this Handbook, the term that each individual system uses to refer to the parties involved will be highlighted and used.

While the police, criminal court, family court, and Supreme Court provide different remedies for victims of domestic violence, there are some common concepts among them. This section will address:

- who can obtain an order of protection
- various courts that issue orders of protection
- how orders of protection can be helpful

Who can obtain an order of protection in family court?

The family court can issue orders of protection to people who are “members of the same family or household” or in an “intimate or dating relationship.” The following categories of people are included. Those who are:

- Related by blood,
- Related by marriage,
- Have a child or children in common, or
- Are or have been in intimate or dating relationships whether they lived together or not, such as heterosexual partners, same-sex partners, and young adult/teen/adolescent dating relationships.

It is important to emphasize that an intimate relationship does not have to be sexual in nature, and the duration and frequency of interaction between the persons is not defined. The law emphasizes that intimate relationships do not include casual social or business relationships. Ultimately, it is up to the court to determine whether or not a relationship is “intimate” based on the facts and circumstances of the case.

The inclusion of intimate or dating relationships in the criminal and civil legal system’s definition of “domestic violence” is relatively new. For example, if someone who was not related by blood, marriage or children in common tried to obtain a family court order of protection before July 2008, they were unable to do so. Therefore, if this is a system that you or someone you know tried to use before but was denied services, please know that you are able to try again. As always, it is best to speak with a domestic violence advocate who can explain how the system will apply to your specific situation and the advocate can be helpful if you are unsure if you qualify for services.

Who can obtain an order of protection in criminal court?

In criminal cases, the victim is called the “complaining witness.” The District Attorney’s office, which prosecutes these cases, can ask for an order of protection to be granted on behalf of the complaining witness.

Who can obtain an order of protection in Supreme Court?

In New York State, the Supreme Court is a court of general jurisdiction, which means that any case that one of the other courts can decide can also be decided in the Supreme Court. Divorce cases cannot be heard in family court or criminal court. They are only heard in Supreme Court. If you are a party to a divorce case in Supreme Court, you can make a motion for an order of protection in the Supreme Court in front of the same judge who is handling the divorce case.

Integrated Domestic Violence Courts

When there is both a criminal case in which the abuser is the defendant and you are the complaining witness and a family court case to which you are both parties, the case may be transferred to the Integrated Domestic Violence Court (IDVC). The same judge will hear both the criminal case and the family court case(s). If a divorce is filed, that case may also be heard by the same judge in the IDVC because it is part of the Supreme Court. When a case is transferred to the IDVC, all of the cases pending will usually be heard by the court on the same day, which will reduce the amount of court appearances and travel to different courts that would otherwise be required. In addition, the IDVC has resource coordinators and specialized knowledge about domestic violence that can be helpful to you.

Orders of Protection

Many victims of domestic violence obtain orders of protection. In 2011, New York State courts issued a total of 301,021 orders of protection. While orders of protection can be helpful, these orders cannot guarantee that your partner will stop being abusive or violent. Some abusers choose not to obey orders of protection and you may have to contact local law enforcement or go back to court to enforce the order. This should not discourage you from using the law to assist you. It is important to assess your situation and seek legal advice to determine if an order of protection is right for you. You are the best judge of whether getting an order of protection will be helpful to you. Domestic violence attorneys can help you decide whether getting an order of protection or not is a good strategy for you. They can also provide information and advocacy if you need assistance in getting an order of protection or in having an existing order enforced.

While an order of protection cannot guarantee your safety, it can help in several ways. Specifically, orders of protection can:

- direct the abuser to stop the abusive behavior toward both you and your children;
- tell the abuser to leave and stay away from your home, your job, and your family;
- order the abuser to refrain from injuring or killing any companion animal;
- direct the abuser to have no contact with you - meaning no phone calls, text messages, email, letters, messages, or communication through other people; and
- order the abuser to stay away from the children (except for any court orders regarding custody and visitation) and their babysitter, day care or schools.

- If you have left your home, an order of protection can provide for the police to go with you to get your personal belongings.
- If you are being stalked or harassed at work, an order of protection can include your job and may help your employers understand the need for increased safety measures at work.
- Upon the issuance of an order of protection, the judge can order the suspension or revocation of an abuser's license to carry or possess a firearm. There are a variety of conditions under which this can occur and the level of gun restriction varies. The laws that govern the removal of guns are complicated. You can speak with an attorney or court personnel to weigh your options.
- If the abuser violates an order of protection, the police can, and in some cases must, arrest the abuser. The charges can range from misdemeanors to felonies based upon the elements of the crime and the abuser's history of violating court orders.

In New York State, there are a few different ways that a victim of domestic violence can obtain an order of protection but the process most commonly used by victims is through either criminal court or family court, although orders of protection can also be granted in Supreme Court, usually as part of divorce proceedings. Details on how to obtain one are described in the criminal court section and the family court section of this guide. Whichever court you choose to use, it is important to remember that you have a right to keep your address confidential. If you have moved to a new, safe location or if you are staying in a domestic violence shelter, you do not have to give the judge or the court your address. The courts routinely ask for this information, so you will have to say that you are afraid to let the abuser know where you are now living and request to keep your address confidential.

Law enforcement should enforce orders of protection regardless of what type of court issued the order, and whether or not you have the order of protection with you. While it is best to keep a copy with you at all times, most orders of protection can be listed in a statewide registry that can be accessed by law enforcement personnel and the courts. You can also make copies of the order to leave at your job or at your children's school or day care center, if the abuser is ordered to stay away from these places, or if you have been awarded custody. It is a good idea to make a copy of the order and any other documents you might need and keep them in a safe place. If you lose your copy or the abuser destroys it, the court can give you another copy of your order of protection, at no cost to you.

If the abuser violates any part of a criminal court, Supreme Court, or Family Court order of protection, you can call 911. He/she can be found in *contempt of court* for failure to obey an order of the court. A person who violates an order of protection should be arrested. If he/she pleads guilty or is convicted after a trial, the court will impose a punishment, which is called "sentencing." A person who is guilty of violating an order of protection could be sentenced to abide by a new, extended order of protection, to attend a batterers' program or substance abuse treatment program, to a period of probation, or to incarceration, depending upon the court's determination of the severity of the violation and the number of prior convictions on the person's criminal record.

NOTE: Studies have shown that batterers' programs and substance abuse treatment programs imposed upon a perpetrator of domestic violence do not "cure" the abuser. He/she does not stop posing a threat to your safety simply because such a program was completed.

If you would like to have a change made in a Family Court order of protection or in a custody order, you can file a *Modification Petition* - a petition that explains what has changed and that you would like the order to be changed as well. To modify a criminal court order, you should speak with the prosecutor assigned to your case. Ultimately, the prosecutor will decide whether or not to seek a

modification of the criminal court order and the judge will make the final decision.

Police Response to Domestic Violence

Terminology check: Police refer to victim/survivors as either “victim” or “complaining witness” and abusers as “suspect” or “perpetrator.”

There are a few ways that a domestic violence incident can be reported to the police:

- through a phone call to 911,
- patrol witnessing an incident and responding accordingly, and/or
- in person at the police station.

Either way, police procedure starts with conducting a thorough on-scene investigation, as should be done during any police response. This investigation includes asking you (the victim), the suspect (if present), and any witnesses what happened. If both you and the suspect are there when the police respond, the police should separate you to ensure that the suspect cannot see you or hear what you are saying. Among other things, officers will be examining:

- evidence of harm or injury to you or your children (for example, cuts, bruises, swelling or torn clothing);
- damage to furniture, walls, windows, your car or other personal property;
- signs of a break-in;
- threatening voice mail messages, email, text, or handwritten notes; and
- history of abuse.

If the responding officers determined that you and the perpetrator are “members of the same family or household” or in “an intimate or dating relationship,” the police must:

- complete a Domestic Incident Report (DIR).
 - Police officers are required to complete a DIR whenever they respond to a “domestic disturbance” call. The DIR is to be completed regardless of whether or not the police make an arrest and the officers must provide a copy to you at the scene. If you did not receive a copy of the DIR, contact the police agency that responded and ask them for a copy. You cannot be charged for a copy of the report.
 - The DIR will contain your statement about the incident that led to police response. What you say counts as evidence, so the statement you give to the police is very important. You will be provided the opportunity to review and sign the report. Make sure to read the statement carefully and if there is anything in it that is incorrect, do not sign it. Ask the officers to change the written statement so that it matches what actually happened. Sign it only when it says what you want it to say.
- provide you a copy of the Victim’s Rights Notice.
 - The victim’s rights notice tells you what your legal rights are and includes information on domestic violence services in your community. This can be provided in either English or Spanish.
- arrest the perpetrator - under certain conditions.
- attempt to identify and arrest the primary physical aggressor if an officer has reasonable cause to believe that more than one family or household member has committed a family offense misdemeanor.

In addition to these steps, police must inform you of your right to petition Family Court for an order of protection.

In order for the police to make a decision to arrest, they need to have “probable cause” that a crime was committed. Not every incident that the police are called for rises to the level of a crime - some behaviors may just be considered a violation - similar to a parking ticket. Many times, the proof that a crime was committed depends on what you tell the police. If you were physically injured by the abuser, explain to the officers how you were injured and what actions the abuser took to cause that injury. In New York State, to constitute an assault there must be at least a “physical injury” which is defined as “impairment of physical condition or substantial pain.” Impairment of physical condition or substantial pain can vary widely as a result of officer interpretation and discretion.

This places a heavy burden on you to clearly articulate your physical experience for an officer to identify impairment of physical condition or substantial pain. For example, if you were slapped or punched on the side of your face and you are experiencing a ringing sensation in your ears or you have a headache, tell the officer about that as it could be considered a physical injury.

Officers will ask you if you want medical attention. If you decline medical attention even though you are injured, explain to the officer why you are declining. Declining medical attention should not be conclusive evidence that there is no injury. It is also important that you show the officers any physical evidence there may be of the incident. For example, if you were pushed up against furniture, show that area to the officers. Maybe the contents of the furniture were knocked over or the furniture was moved from its original location. If the perpetrator used an object to assault you such as belt or a rope to hit, confine, or strangle you, make sure you leave it in the location the perpetrator left it and show that to the officers. These are only some examples. There are many other examples of evidence. While it may be difficult to think about these things right after an incident or even now, collecting and preserving evidence will be helpful to you down the road.

Without a physical injury, an assault may only be considered harassment which is a violation level offense and will not always lead to an arrest. Elements of harassment include being struck, shoved, and kicked but it is not considered assault unless there is impairment of physical condition or substantial pain. This does not mean that you have to be physically assaulted for the actions to be considered a crime. We know that most, if not all, abusers stalk their partners and stalking is a crime.

If the abuser is following you, routinely showing up at your home, job, or school or monitoring your behavior, the police may be able to charge the abuser with stalking. In addition, abusers may display dangerous objects while threatening to assault their partners, which also may be considered a crime. Most importantly, if this is not the first time the abuser has threatened you with harm or pushed or shoved you, or if you are afraid of future harm, be sure to tell the police. This information is helpful as it shows a history of abuse and could supplement the evidence of a current crime or may identify a crime for which the abuser can be held accountable for, other than the incident police were called for this time. If there currently is an order of protection in place or you had one previously but it expired, tell the officer that information. While it is helpful if you have a copy of the order to show the police, it is not required that you have it on you as police can check the computerized order of protection registry. In addition, it does not matter where the order of protection was issued as police are able to enforce any active order of protection from any state or US territory.

There are certain conditions in which the police are required to arrest the perpetrator, and

other conditions in which they are not required to arrest (allowing the officer discretion to arrest or not) and other conditions that they are unable to make an arrest - such as when a violation is committed. Because of this, it is important that you be very clear with the police exactly what your expectations are and be clear about exactly what happened. Please note, however, that even if you ask them not to arrest, there are conditions under which police officers must arrest. Additionally, state law prohibits the police from asking you directly whether you want them to make an arrest. If the police have probable cause to make an arrest but the suspect is not at the scene, the police will try to arrest the suspect in the following hours/days. This does not mean that there will be an all out immediate pursuit of the suspect; each police agency handles this process differently. Ask the responding officer what to expect.

Important note: Even if no arrest is made when the police respond to an incident, they can still help you get medical care, help you and your children get to a safe place, and take a statement to document the incident. If you've asked the police to make an arrest and they decide not to make one, make sure they provide their reasons in the Domestic Incident Report.

If the police do not make an immediate arrest and if you are afraid for your immediate safety and the safety of your children, tell the police that you need them to take you to a safe place. At a minimum, the police should transport you and your children to the police station where you can call a domestic violence program or a family member or friend to help you find a safe place to go.

If you do not already have an order of protection at the time of an incident in which the police get involved but want one, ask the officer to include that in the statement on the DIR. If the suspect is arrested, it is possible that an order of protection can be issued by criminal court (see the Criminal Court section for more information) and having this request in the DIR can be helpful. In addition, it is important to tell the officer if the abuser has access to weapons such as handguns, rifles, shotguns, other firearms, or ammunition as firearm permits can be suspended or revoked when an order of protection is issued under certain conditions. 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 the suspect was not arrested because there was no probable cause for an arrest or if there was probable cause but the offender was not present at the scene, you still have the right to petition Family Court for an order of protection if your relationship to the suspect meets the definition of "members of the same family or household" or "intimate or dating relationship" described in the beginning of this section. You can petition for a family court order of protection even if you already have or will be getting a criminal court order of protection. *For more information on how to petition for a family court order of protection, please see the Family Court section for more information.*

If the police have reason to believe that both you and the abuser committed a crime that rises to the level where an arrest must be made under the mandatory arrest law, police are required by law to determine who is the "primary physical aggressor." This means police must investigate to differentiate between the victim and the abuser. The police should not arrest both you and the abuser simply because both of you file a complaint. The purpose of the "primary physical aggressor" policy is to protect victims of domestic violence when their abusers file a cross-complaint against them or when victims fight back in self-defense. The primary physical aggressor is not necessarily the person who was first to use force during the incident. To determine the primary physical aggressor, the police are required to:

- compare the injuries inflicted on both parties;

- determine whether any threats were made;
- investigate whether one party has a prior history of committing domestic violence; and
- consider whether one party acted in self-defense.

Primary physical aggressor does not prevent officers from arresting all parties. If you are arrested, you should speak with an attorney (one that you hire or one that is appointed for you) before answering any more questions the police may ask. Tell your attorney that you are a victim of domestic violence and describe the events leading up to the arrest. If you acted in self-defense or the abuser threatened you or has a history of committing domestic violence, that information should be given to the attorney as well. It is also a good idea to contact a local domestic violence program to speak with an advocate.

If you don't understand why something is happening during the police response, ask the officer but also reach out to a domestic violence advocate who can talk to you about your experience and explain to you what happened and what your options are at that point. It is also helpful to document the officer's name and, if possible, the officer's badge number, just in case you want to follow up with the officer about the incident.

Criminal Court Process

Terminology check: during the criminal court process, the victim/survivor is referred to as the complainant and the abuser is referred to as the defendant.

After an arrest, the defendant may be kept in custody from a few hours to 24 hours and even longer if the defendant is held without bail. The defendant's release depends on which process occurs. It is possible that the police can issue a Desk Appearance Ticket (DAT) to the defendant. The DAT only requires that the defendant be fingerprinted and warrant checks completed and then the defendant is released. If a DAT is issued, an order of protection will not be issued at that time as an order of protection can only be issued by a judge. There are some areas of the state that use DATs and other areas that do not.

If a DAT is not used, the defendant will be charged formally at an arraignment. Other actions that can occur at arraignment are:

- the judge can determine how the defendant will be released - either released on his/her own recognizance (ROR), released under supervision (RUS), released on bail, or held. In most cases, defendants are "ROR'd" or have bail set.
- the judge can issue a temporary order of protection that protects you and possibly your children and/or your pets. If you do get a temporary order of protection, remember it is only *temporary*. It will be in effect only from court date to court date until the court decides the final outcome of the case. Once the case is decided, the judge can issue a final order of protection. A final order of protection is sometimes called a permanent order. However, this is misleading since all orders contain some time limit.

A criminal case is prosecuted by the county district attorney on behalf of the People of the State of New York. Each district attorney has assistant district attorneys (ADAs) that manage the cases. Because the district attorney's office controls the case, complainants/victims do not have the ability to press or drop charges - that is entirely the ADA's decision.

The district attorney may proceed with the prosecution even if you ask them not to. If you believe that their decision to go forward with the case may place you in more danger, you can tell them about your safety concerns. You can also speak with a domestic violence advocate to work out a safety plan. One factor that impacts the ADA's decision to proceed is the amount and quality of evidence that exists to prosecute the case. If the only evidence is your statement and testimony in court, then the future of the case relies heavily on your cooperation.

It is important to know from the prosecutor which court dates you are expected to appear on and that you do appear when expected. Otherwise, the prosecutor may not have enough evidence to go forward and the case may be dismissed. Call the court clerk or the prosecutor to make sure you know when the next appearance is scheduled. Do not wait for the prosecutor's office to call you. An advocate can help you with this, but it is a good idea to be aware of the proceedings yourself. If the abuser threatens you in order to discourage you from testifying, tell the prosecutor.

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

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 a guilty plea is entered or if the abuser is found guilty at trial, someone from the Probation Department may speak to you as part of a pre-sentencing investigation or mail you a letter to help prepare a Victim Impact Statement (VIS). Your participation in the VIS is completely voluntary and provides you with an opportunity to share with the judge your version of the crime and any resulting impact on you or your children, your request for the abuser to pay for any documented financial losses (restitution/reparation) and your opinion on any proposed sentence. The abuser could be required to pay a fine, sentenced to jail, required to complete a batterer's program and/or substance abuse treatment program, and/or sentenced to probation.

Even if the abuser is found guilty in a Criminal Court proceeding, the abuser may not necessarily go to jail. In fact, it is rare for abusers to spend any length of time in jail. If the abuser has never been convicted of a violent crime before - and sometimes even if there are other misdemeanor convictions on the record - the court may order an *adjournment in contemplation of dismissal* (sometimes called "ACD" or "ACOD"). This means that if the 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/her actions against you are crimes and that he/she will be held accountable for his/her actions.
- Even if the abuser is found guilty and is not ordered to spend time in jail, he/she may be sentenced to a period of probation. While on probation, the abuser will have to report to the court regularly. A probation officer will also be assigned to monitor the abuser's behavior. Probation conditions may include staying away from you and not hurting or threatening you. Violating these conditions could result in jail time for the abuser.

Criminal prosecution also has disadvantages:

- Criminal cases require a higher level of proof of what happened than civil court (Family Court) cases. The court will usually need other evidence, in addition to your testimony, that the 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 (ACD/ACOD), you may 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 of protection extended, however, you will need to convince the court that you are still at risk of harm from the abuser.
- It is up to the District Attorney's Office, not up to you, whether or not the case will be prosecuted.

It is important to know that some domestic violence crimes are punishable under federal law, as well as under state law. For example, if the abuser travels from one state to another with the *intent* to violate an order of protection or to injure, harass, or intimidate you, and then actually violates that order or causes you bodily injury, this is a federal crime. If the abuser has ever forced you to cross a state line with the intent to injure, harass or intimidate you, this is also a federal crime.

Federal law also prohibits interstate stalking. For example, if the abuser crosses a state line with the intent to injure or harass you, and then actually causes you to have reasonable fear of death or serious bodily injury to yourself or a member of your immediate family, this is also a federal crime.

Family Court Process

Terminology check: During the family court process, the person who requests protection from family court (typically the victim/survivor but sometimes can be the abuser) is called the "petitioner" and the person that is being filed against is called the "respondent" (typically the abuser but can be the victim/survivor).

While the process for obtaining a family court order of protection is different from obtaining a criminal court order of protection, a family court order of protection can provide you with some of the same protections as a criminal court order of protection and, in some cases more, because you can address custody and visitation in family court as well. There is nothing that prohibits anyone from having both a criminal court order of protection and a family court order of protection. Having two options allows you to choose what works for you.

To obtain a family court order of protection, you must be eligible for family court.

- To be eligible for family court,
 - the petitioner and the respondent must be related by blood, marriage, children in common or people who are or have been in an intimate dating relationship whether they lived together or not (this intimate relationship does not have to be sexual in nature and the duration and frequency of interaction is not defined); and
 - at least one of the following family offenses must have been committed:
 - disorderly conduct,
 - harassment in the first degree,
 - harassment in the second degree,

- aggravated harassment in the second degree,
- sexual misconduct,
- forcible touching,
- sexual abuse in the third degree,
- sexual abuse in the second degree,
- stalking in the first degree,
- stalking in the second degree,
- stalking in the third degree,
- stalking in the fourth degree,
- criminal mischief,
- menacing in the second degree,
- menacing in the third degree,
- reckless endangerment,
- strangulation in first degree,
- strangulation in the second degree,
- criminal obstruction of breathing or blood circulation,
- assault in the second degree,
- assault in the third degree, or
- attempted assault.

You do not have to know the terms for these offenses, and, actually, you should not define what happened to you by using these terms.

You should describe in detail what happened - for example, instead of saying "I was assaulted," describe every action as you remember it happening such as, "the abuser was yelling at me, pushed me up against the wall with both fists against my chest, and punched the wall beside my head, damaging the wall."

One of the benefits of family court can also be considered a challenge and that is - the petitioner essentially controls the whole process. Unlike criminal court where the case is managed by the prosecutor, the petitioner initiates and maintains the family court case throughout the entire process. In order for your case to proceed, you are the one who must go to court and tell your story to a judge and then you must attend every court date after you petition. This is beneficial because you have more control over the case but it can be a burden because you have to initiate the case by petitioning the court which requires paperwork to be completed and then you must attend every court date. Unless you are represented by an attorney, you represent yourself in court. You can have a lawyer advise and represent you in court. It may be possible to have an attorney appointed to represent you if the court deems you financially eligible or to obtain a pro-bono or legal services attorney, although these resources may be limited. Speaking with a domestic violence advocate can be helpful as they are able to provide you with information and education about the process but this is not legal advice, which can only be given by an attorney.

To start the process of obtaining an order of protection, you must petition the court. To do this, you have to fill out paperwork that provides all the information they need to know including details of the incident that led you to seek an order of protection. Every county functions differently so how this process works varies from county to county. Generally, there is someone who can help you through that process. This person can be either a court clerk or other court staff, a probation officer,

or a domestic violence advocate. Even though you may be assisted through the process, it is important to be prepared.

First, expect to be at family court for many hours, maybe even all day. Some courts provide childcare. Try to find out if these services are available before you go to court. If they do not have child care services, try to arrange for the care or transportation to school or daycare of your children. This does not mean that you cannot bring your children with you if you do not have any other options but sitting around the courthouse for several hours will be hard for them and having them at the hearing could be stressful for all of you. If you are employed, New York State law requires an employer to allow time off, without penalty, for you to go to Family Court, Criminal Court, or to consult with the district attorney. You must give your employer at least one day's notice of your need for this time off. If your employer attempts to penalize you for taking this time off, contact your local domestic violence program or the local office of the New York State Department of Labor.

Second, be prepared to tell your story in a short, yet informative, manner. You must describe why the court should protect you from the abuser and you have to describe to the court that at least one offense has been committed against you. Again, you do not have to (and actually should not) list the offenses by their legal title but you must describe the incident or incidents. You should also describe the history of abuse which does not have to only be physical abuse, it can also be non physical such as (but not limited to) emotional or economic abuse. A helpful way to think about this is to provide the court with information about the first incident, the incident that made you most fearful, and the most recent incident. That will provide the court a well-rounded view which will enable them to make an informed decision.

On the day that you file the petition, you will go before a judge who will review your petition, ask you some questions and then decide if there is enough evidence for the case to proceed. If the judge decides that there is enough evidence for the case to proceed, then the judge may issue a temporary order of protection and you will be scheduled for another court date, which is commonly referred to as the "return date."

The respondent will have to be served with the temporary order of protection which will include a copy of the petition as it is necessary that the respondent know what allegations are being made against him/her. The abuser WILL SEE THE PETITION -- this is critical to consider, as the abuser will know what you said. If you have concerns about this, you should speak with an advocate to weigh your options and create a safety plan.

Service of the order of protection can be done by anyone- over the age of eighteen, other than you. The court personnel or the judge should ask you how you would like to have it served - either by the police or alternate arrangements made by you. If you choose to have the police serve the order then the court is responsible for forwarding the order to the appropriate police station. If you elect to arrange for service on your own, you can either bring it to the police station yourself or have a friend or family member serve it for you. If the order excludes the respondent from your home, having the police serve the order may be the safest option as they will inform the respondent that he or she has to vacate the home and wait until that is completed. As always, there are positives and negatives to every approach and they are different for everyone, so the following are things to consider:

If you elect to have the police serve the order:

- If the court forwards the order to the local station for service, know that this process is not immediate. Courts can transmit this information electronically, which can speed up the process, but when the police serve, the timeframe for service is not defined and it is dictated by the availability of an officer. In addition, there is no process in place for the police or the court to notify you when the order is served. Some areas may follow up to inform you but in other areas of the state, you may not know until you return for your court date. This can be complicated to safety plan around.
- You need to provide the court an address as to where the police will serve the order and, typically, you are allowed to provide one address. The police will generally not search for the respondent. This can be complicated when you are unsure where the abuser lives at the time of the court process.
- The police are legally required to serve the order if asked and are not allowed to charge a fee to serve the order.

If you elect to arrange for the service yourself:

- You are not allowed to serve the respondent yourself but you can:
 - have a friend or family member who is over the age of 18 serve the respondent,
 - bring the order of protection to the police station that is local to the address where you plan to have the abuser served, or
 - hire a process server. Please note that if you hire a process server, there would likely be a fee associated with it and there is nothing that prohibits a process server from charging a fee for this service.
- If you choose to bring the order to the police station that is local to the address where you plan to have the abuser served, be prepared that this process may take some time as you may have to wait until an officer is available to serve the order. Also, it can be beneficial for you to bring a picture of the abuser if you have one so that the police can identify the correct person to serve.
- The court will provide you with your copy of the petition and order, as well as copies for the respondent, that include the petition, the order, a summons, and an “Affidavit of Service.” The petition, the order, and the summons must be served on the respondent. The Affidavit of Service is not a document that the person serving the order gives to the respondent - it is a form that must be completed by the person serving the order describing the date, time and location of service and must be notarized and you must bring it back into court on your next court date. This form is very important as it proves to the court that the respondent had notice to appear. If the police serve the order, they too have to complete the Affidavit of Service but they do not have to have it notarized as they are sworn officers.

The conditions of the order are not in effect until the order is served on the respondent; therefore knowing when the order was served is an important part of safety planning. Whether the order is served or not, you must appear in court on the “return date.” If you do not appear, the case will likely be dismissed (therefore, there will not be an order of protection in place), even if the respondent appears. If there is a compelling reason you cannot appear in court on the hearing date, call the clerk right away to ask for an adjournment and explain why you need it and they may schedule the hearing for another date. Most likely, conflicts with work or child care issues will not be sufficient. If no one was able to serve the respondent, inform the court of this and your case can be adjourned to a new court date. If you originally had a temporary order of protection, you should ask for it to be extended until the next court date. You need to appear in court to request an extension. Attempts to

serve the respondent will have to be made again. Speak with a domestic violence advocate to strategize around how to complete this service.

The return date is typically where a hearing is conducted and, if a judge determines that you need to be protected from the abuser, a final order of protection will be issued. This can vary in length but is typically up to two years in duration. If the court finds after a trial that certain aggravating circumstances are present in your case, the order of protection can be up to five years in duration. You do not 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 other witnesses, photographs of injuries, police reports, or medical records. If these types of evidence do not exist, the judge can make a determination based on your testimony and that of the abuser. A family court order can do more than order the abuser not to harm you. As in Criminal Court, a Family Court order can require:

- the abuser to stay away from your home, even if that is where the abuser lives (known as an exclusionary order);
- to stay away from your workplace or school;
- to not call you on the telephone, send you text messages or emails; and
- to pay restitution.

When the final order of protection is about to expire, you can file a new petition with the court seeking to extend the term of the order of protection. This will also require you to appear in court. In order to get the court to renew the order of protection, you must show “good cause” for it to do so. The good cause need not be a violation of the order while it was in effect but it should be some fact or facts that lead you to believe that the abuser still poses a threat.

Additionally, a Family Court order of protection can grant 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.

While you and the abuser will both be present in court at the return date, you do not have to speak with or sit near the abuser or the abuser’s family or friends in court. If the abuser tries to intimidate you or you feel pressured in any way, go immediately to a court officer, clerk or anyone else who works in the courthouse and ask for help. Family Court is open to the public, so the abuser may bring family and friends into the courtroom when you speak with the judge. You can petition the court to close the courtroom to outside parties, but your request may be denied unless there are special circumstances that might disrupt the court proceedings.

Whichever court you use, it is understandable to be feeling anxious about the process. If you have questions about what is going to happen, contact your local domestic violence program. 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 finding an attorney. 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.

Unless there is a pending divorce or legal separation in Supreme Court, if you have children in common with the abuser and are seeking custody, you can obtain an order of custody from the 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. If you do fear that the abuser will take the children away, be sure to state this in your petition. Unless the 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 the visitation. 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.

You must obey any custody or visitation order issued by the court. It is important to make sure that the order of protection and the custody/visitation order do not have conflicting requirements. For example, the order of protection may say that the abuser must stay 1,000 feet away from your home, but the visitation order says that the abuser must pick the children up at your house. If such a conflict exists, be sure to point it out to the judge(s) or ask a domestic violence advocate for assistance.

Crime Victims Compensation

You may be eligible for compensation from New York State's Office of Victim Services for expenses related to personal injury, death and loss of essential personal property. The expenses may cover:

- Medical and counseling expenses
- Loss or damage of essential personal property (*up to \$500, including \$100 for cash*)
- Burial/funeral expenses (*up to \$6,000*)
- Lost wages or lost support (*up to \$30,000*)
- Transportation (necessary court appearances for prosecution or to related medical appointments)
- Occupational/vocational rehabilitation
- Use of domestic violence shelters
- Crime scene clean-up (*up to \$2,500*)
- Good Samaritan property losses (*up to \$5,000*)
- Moving expenses (*up to \$2,500*)

To be eligible for compensation from the Office of Victim Services,:

- The victim **must** be an innocent victim of the crime
- Victims of crime who were physically injured as a result of the crime
- Victims of crime who are under 18, 60 and over, or disabled, who were not physically injured
- Certain relatives and dependents, including surviving spouse, child, parent, brother, sister, stepbrother, stepsister, stepparent or person primarily dependent on the victim for support
- Those who paid for or incurred burial costs for an innocent crime victim
- Child victims, a child who witnesses a crime, and the child's parent, stepparent, grandparent, guardian, brother, sister, stepbrother or stepsister
- Certain victims of unlawful imprisonment or kidnapping
- Certain stalking victims
- Victims of terrorist acts outside of the US who are a resident of New York State
- Victims of frivolous lawsuits brought by a person who committed a crime against the victim

You can apply for compensation directly from OVS or through contacting a local victim assistance program near you. To download the forms and/or find out how to contact a local victim assistance program, you can call (800)-247-8035 or visit, www.ovs.ny.gov.

Accessing Services from Local Department of Social Services

Every county has a local department of social services; in NYC, it is called the Human Resources Administration (HRA). To locate your local department of social services, you can contact a domestic violence advocate, or if you can safely access a computer, you can look up your local information.

Your local department of social services (LDSS) or HRA may be able to help you receive public benefits. Public Assistance has two programs you may be eligible for: *Family Assistance Program* for those with children under 18 and the *Safety Net Assistance Program* for those without children under 18. The benefits may include:

- food stamps,
- Medicaid,
- housing allowance,
- job training,
- child care subsidies, and
- cash assistance.

In addition, your LDSS/HRA may pay to store your personal items, assist with moving expenses, provide transportation for your children to attend school and provide resources to help with furnishing a new residence. There are income requirements that determine your eligibility to receive public benefits. However, if you own property, have bank accounts, or possess other assets and not able to get to them safely, you may also be eligible for public assistance.

If you do not have full citizenship status and are unsure of you or your children's eligibility for social service benefits, it is important that you contact a domestic violence program or immigrants' rights group to ask them to help you figure out your eligibility for receiving benefits.

Local departments of social services have requirements in order to qualify for public assistance. Everyone who is interested in receiving benefits from social services first must fill out an application and participate in an interview. You will be asked to bring items that prove your identity when applying for public assistance. These vary depending on where you apply. You can contact your local domestic violence program to see what documentation you need to bring to prove your identity to your county's local department of social services. If you have safe access to a computer, you may also be able to find out the information from your county's department of social services webpage. Generally, to complete your application you must supply the following documents:

- proof of identity,
- proof of residence and/or rent,
- proof of immigration status,
- proof of income, and
- proof of marital status

If you are missing documents or unable to access them, your worker can help you get them. Remember to not leave your original documents with the caseworker. You can allow them to make copies of the documents, but you should hold on to your originals.

Important Note: The application process for benefits can be lengthy. You can contact your local domestic violence program to have an advocate help you with the completion of the application and/or accompany you to your interview. You should plan to be at your LDSS for several hours, if not the entire day. If you need to make arrangements for childcare, work coverage, etc., you should do so in advance.

Special Protections for Victims of Domestic Violence

Your local department of social services or human resources administration offer special protections and services for victims of domestic violence. Everyone who applies for public assistance is screened for domestic violence. When you receive your public assistance application or when you are re-certifying you will be given a **Voluntary Domestic Violence Screening Form**. You don't have to answer these questions. However, if you are a victim of domestic violence, it may be to your advantage to answer them. If your answers indicate that you are a victim of domestic violence, you will be referred to a Domestic Violence Liaison (DVL).

What is a DVL?

A Domestic Violence Liaison (DVL) should have received special training in the area of domestic violence and can assist you and provide you information and referrals. Meeting with the DVL will not slow down your application or have any effect on your eligibility. The DVL will tell you about services that are available to help you and your children stay safe. These are completely voluntary and you don't have to use these services if you do not want to.

Additionally, victims of domestic violence may be eligible for waivers from certain DSS/HRA requirements if following those requirements would make it difficult for you or your children to escape from domestic violence or if following the requirements would put you or your children at risk of more domestic violence. In order to qualify for the waivers, you will be asked to show proof of the domestic violence. Such proof may include:

- Domestic Incident Report (DIR),
- hospital records,
- police reports,
- an order of protection, or
- at minimum, a sworn statement.

Initial waivers are granted for a minimum of six months, but they can be extended if you or your children are still in danger. After the initial period, a reassessment may require that the waiver be extended, modified, or terminated depending on your circumstances at that time.

Once you have completed and signed the application, submitted your documents, met with the Domestic Violence Liaison (if applicable), and fulfilled your interview requirements, you will be notified between 30 and 45 days as to whether your case is open or has been denied. If your case has been

denied, you have the right to request a Fair Hearing.

What to Do If Your Application Is Denied

If your application is denied, you will receive a notice explaining why. You have the right to a conference and a fair hearing.

To ask for a *Conference*, call your local DSS/HRA. A conference is when you meet with someone other than the person who made the decision about your case. This person will review that decision. If the problem is not settled through a conference, you can ask for a fair hearing. It is a good idea to request a fair hearing at the same time you request the conference because it may take a long time to schedule a fair hearing.

A *Fair Hearing* is a chance for you to tell a judge why you think the decision about your case was wrong. The State will then issue a written decision which will state whether the local department of social services decision was right or wrong. The written decision may order the local department of social services to correct your case. The fair hearing can be canceled if the conference satisfactorily resolves the issues.

Emergency Assistance

If you go to LDSS/HRA and identify as a victim of domestic violence, this will be considered an "emergency" and they must interview you and make a decision regarding emergency assistance on the same day. If you are already getting public assistance and you have an emergency, tell the worker right away. If you are not getting public assistance, fill out an application and tell the worker that you have an emergency. You should complete the application and give it back on the same day you receive it. Your worker will tell you what information you need to provide before you can get assistance to meet your emergency needs. You may be asked for proof of who you are and of who your family members are; you will be finger imaged; and you may be screened for drug and alcohol abuse. The worker will also want to know if you have any income or resources, such as:

- bank accounts,
- vehicles, or
- property.

If you cannot get the information, your worker must try to help you get the information. If it is determined that your need is immediate, you should receive help to meet this emergency the same day.

**At any point during this process, you may call your local domestic violence program and ask for an advocate to assist and/or accompany you to the LDSS/HRA offices and help you fill out your application.

Child Support

If you have children, DSS/HRA will ask you to provide the name, address, and other information about the father of these children. DSS/HRA uses this information to locate the father in order to

collect child support and to find out if he is able to provide health insurance for the children. A DVL can grant a waiver of all or some child support collection requirements if following the requirements would make it difficult for you or your children to escape from domestic violence, or put you or your children at risk of more domestic violence (e.g. revealing your location).

Important Note: Even if you have not been granted a domestic violence waiver, you still have the right to request a Good Cause Exception from specific child support requirements if you have other fears or concerns about following those requirements. If you request a Good Cause Exception, the DSS/HRA must investigate your claim. The DSS/HRA can excuse you from all or some child support requirements.

If the abuser is with you when you apply for public assistance, you may decide it is safer to not say anything to the worker about the violence. However, you can call the DSS/HRA worker or your nearest domestic violence program later, when you feel it is safe.

If you are currently on public assistance, DSS/HRA workers must provide the Domestic Violence Screening Form to you if you identify yourself, at any time, as a victim of domestic violence or if you request the Domestic Violence Screening Form. You will also have an opportunity to complete the Domestic Violence Screening Form when you apply for re-certification. However, you may apply for a domestic violence waiver at any time. If you are denied a waiver but believe that the DSS/HRA requirements will place you or your children in danger, you have the right to appeal that decision. You may want to contact a domestic violence advocate for assistance.

Confidentiality

Everything you tell the DSS/HRA worker or the Domestic Violence Liaison is confidential **except** if you report that your children are being abused or neglected. CPS/ACS will have to investigate to determine whether your children are safe in your care. CPS/ACS cannot remove your children from you solely on the grounds that you are a victim of domestic violence and your children have been exposed to domestic violence. The courts cannot assume that every child exposed to domestic violence suffers harm or risk of harm as defined by the neglect law. The court has to assess what a reasonable parent would have done to protect the children under the circumstances.

Processing Acceptance

Because of the paperwork involved, it can take some time before you actually receive money or other benefits. You may be told verbally or by mail that you have been accepted, but it may be some time before you receive your Benefit ID Card (In NYC, your EPFT photo ID Card) that allows you to pick up your benefits. If you can prove that you have an immediate need, your immediate need should be met sooner. You should make plans for your needs, and your children's, in the time between when you apply and when you receive notification of your acceptance. There are resources available to help you meet your immediate needs, including local food pantries or soup kitchens. You can reach out to your local domestic violence program to find out what resources your community offers and how to access them.

Employment Protections for Domestic Violence Victims

The New York Human Rights Law was amended, effective July 7, 2009, to provide protection from employment discrimination for victims of domestic violence. The Human Rights Law defines a domestic violence victim as an individual who is a victim of an act which would constitute a family offense in Family Court. It is against the law for an employer to discriminate against a domestic violence victim in hiring for a job, job advancement, requests for use of leave time, or other terms, conditions or privileges of employment. This law is intended to protect victims of domestic violence from discrimination in employment so that they may have the ability to deal with the unique circumstances of their lives and achieve financial independence from the abuser.

If you believe that you have been discriminated against by your employer because you are a victim of domestic violence, you can file a complaint with the New York State Division of Human Rights. The New York State Human Rights Law covers employers with four or more employees. A complaint must be filed with the Division within one year of the alleged discriminatory act. For more information or to file a complaint, call (888) 392-3644 or visit www.dhr.ny.gov.

Time Off for Medical Care

If you need time off from work for medical or mental health care related to the domestic violence, you are protected by the disability and reasonable accommodation provisions of the Human Rights Law. These rights can be enforced by the New York State Division of Human Rights. You may also have rights under the federal Family Medical Leave Act (FMLA) and other disability laws.

Other Time Off

It is against the law for an employer to take any adverse action against an employee who is a victim of a crime for taking time off to appear in court as a witness, to consult with a district attorney, or to obtain an order of protection. It is discriminatory under New York's Human Rights Law for an employer to treat a victim of domestic violence any differently than employees who need time off for other reasons.

Unemployment Insurance

If you need to leave a job because of domestic violence, you are not necessarily barred from receiving unemployment insurance benefits. Under New York Labor Law section 593, circumstances related to domestic violence may be "good cause" for voluntarily quitting a job. Also, job performance problems related to domestic violence (such as absenteeism or tardiness) will not necessarily bar benefits.

Housing Protections for Domestic Violence Victims

Termination of Residential Lease

In certain circumstances, New York State Real Property Law Section 227-c permits a victim of domestic violence to terminate his/her residential lease. You must have an order of protection in order to be eligible for relief under this law. Additionally, you must establish that:

- there is a "substantial risk of physical or emotional harm" to you if you stay in the apartment and that relocation will substantially reduce such risk;
- you tried to get the landlord to voluntarily permit you to terminate the lease and he/she refused to do so; and
- you acted in good faith.

You will be responsible for payment of rent due under the lease through the date of the termination of the lease.

Rights of Domestic Violence Victims Living in Assisted Housing

The federal Violence Against Women’s Act (VAWA) provides housing protections to victims of domestic violence residing in certain assisted housing programs, including: public housing, Section 8 vouchers, project-based Section 8, and certain housing for the elderly or people with disabilities. VAWA does not cover tenants who live in private housing with no rental assistance. VAWA housing protections cover victims of domestic violence, dating violence, and stalking. It also covers the victim’s immediate family members, except for the abuser. You don’t have to be married to or living with the abuser to be covered by the protections in VAWA.

VAWA offers rights for victims of domestic violence, dating violence, and stalking, including:

- If you are applying for housing, you cannot be denied for the sole reason that you are a victim.
- You cannot be evicted or lose your housing voucher solely because you are a victim.
- Acts of violence committed against you cannot be deemed “serious or repeated violations” of your lease or “good cause” for evicting you and ending your housing voucher.

If a member of your household is violent against you, the housing authority or your landlord can evict the abuser and let you and the rest of your family stay in the home. Also, if you have a Section 8 voucher, VAWA provides that the housing authority may permit you to move and keep your voucher, even if your lease has not ended. Although VAWA does not cover emergency moves for public housing authorities, you can still ask your housing authority to transfer you to another unit. Your housing authority or landlord may ask you to provide “proof” that you are a victim of domestic violence, dating violence, or stalking and that you need to move for safety reasons. The housing authority or your landlord must give you at least 14 business days (weekends and holidays do not count) to provide proof of the violence. The ways that you can show documentation that you are a victim are:

- Complete a certification form that will ask for your name, the name of the abuser, the abuser’s relationship to you, the date, time and place of the violence, and a description of the violence. To get a form, you can call the housing authority or a victim services program.
- Provide a letter signed by a victim service provider, attorney, or medical professional who has helped you with the abuse. You must also sign the letter.
- Provide a police or court record, such as an order of protection.

Address Confidentiality Program

On September 23, 2011, New York’s Address Confidentiality Program (ACP) was signed in to law. The ACP is designed to provide victims the ability to have their mailing address remain confidential by providing a substitute address to use in lieu of their actual address for mailing, public records, and service of process. This law goes into effect on June 23, 2012.

In order to participate in the ACP, you have to file an application with New York’s Secretary of State. The application must include a signed, written statement made under oath affirming that:

- You are a victim of domestic violence;
- You have left your residence because of domestic violence;
- You fear for your safety and/or your children’s safety; and
- If you are applying on behalf of a minor or incapacitated victim, that you affirm that you have the legal authority to act on that victim’s behalf.

You will also sign a form:

- Designating the Secretary of State as agent for service of process and receipt of mail;

- Providing an actual mailing address and telephone number where you can be contacted by the ACP; and
- Listing the address(es) that you are requesting be kept confidential because of the increased risk of domestic violence.

Once enrolled in the ACP, the Secretary of State will forward your mail to your actual address. You are enrolled in the ACP for four years and can withdraw from the program at any time before the expiration date. At the time of the printing of this handbook, the forms and procedures for the ACP have not yet been published. If you are interested in participating in the ACP, you can contact a local domestic violence service provider for additional information and assistance.

Accessing New York State Hotlines

You can call the 24-hour NYS Domestic and Sexual Violence Hotline at:

English	1-800-942-6906
TTY#	1-800-818-0656
Spanish Language	1-800-942-6908
TTY#	1-800-780-7660

In New York City, the 24-hour hotline number is 1-800-621-HOPE (1-800-621-4673), where you can reach advocates who speak both English and Spanish.

Local Domestic Violence Programs:

Albany

Equinox Domestic Violence Services **(518) 432-7865**

HATAS Domestic Violence Program **(518) 463-2124**

Allegany

ACCORD Corporation family Services **(800) 593-5322**

Broome

SOS Shelter **(877) 754-4340**

Cattaraugus

Cattaraugus Community Action **(888) 945-3970**

Cayuga

Cayuga/Seneca Community Action Agency **(800) 253-3358**

Chautauqua

Anew Center The Salvation Army **(800) 252-8748**

Chemung

Salvation Army Safehouse **(607) 732-1979**

Chenango

CCOFCC/Crime Victims Program **(607) 336-1101**

Clinton

STOP Domestic Violence/ BHSN **(518) 563-6904**

Columbia

Columbia-Greene Domestic Violence Program **(518) 943-9211**

Cortland

Aid to Victims of Violence **(800) 336-9622**

Delaware

Safe Against Violence (866) 457-7233

Dutchess

Battered Women's Services of Family Services., Inc. (845) 485-5550

Grace Smith House (845) 471-3033

House of Hope - (845) 765-0293

Erie

BE SAFE/ Domestic Violence Bureau District Atty. (716) 858-4630

Crisis Services Advocate Program (716) 834-3131

Haven House (716) 884-6000

Hispanics United of Buffalo (716) 481-8867

Family Justice Center of Erie County (716) 667-5259

Essex

STOP Domestic Violence/ BHSN (888) 563-6904

Franklin

STOP Domestic Violence/ BHSN (888) 563-6904

Fulton

The Family Counseling Center Inc., Domestic Violence Program (518) 725-5300

Genesee

YWCA Domestic Violence Program (585) 343-7513

Greene

Columbia-Greene Domestic Violence Program (518) 943-9211

Hamilton

Hamilton County Domestic Violence Services (800) 721-8534

Herkimer

Domestic Violence Program of Herkimer County (315) 866-0458

Jefferson

Victims Assistance Ctr. of Jefferson Co., Inc (866) 782-1855

Lewis

Lewis County Opportunities Inc (315) 376-4357

Livingston

Chances & Changes, Inc (888) 252-9360

Madison

Victims of Violence (315) 366-5000

Monroe

Alternatives for Battered Women (585) 232-7353
Elder Abuse Prevention Program @ LIFESPAN (800) 454-5030

Montgomery

Domestic Violence Services and CVS/CCMC (800) 721-2173

Nassau

Circulo de la Hispanidad Inc./ Salva Domestic Violence Program (516) 889-2849
Nassau County Coalition Against Domestic Violence (516) 542-0404

New York City 24 Hour Hotlines

NYC Domestic Violence Hotline (800) 621-HOPE/4673
Alternative Hotline (212) 577-7777

Bronx

Safe Horizon (800) 621-HOPE/4673
Violence Intervention Program (800) 664-5880

Brooklyn (Kings County)

Center Against Domestic Violence (718) 439-1000
Domestic Violence Project/ Urban Justice Center (718) 875-5062
Food First Family Project (718) 443-3928
HELP R.O.A.D.S (718) 922-7980
Horizons (212) 262-7655
LaFamilia (718) 287-2657
Ohel Children's Home & Family Service (800) 603-6435
Park Slope Safe Homes Project (718) 499-2151
Safe Horizon (800) 621-HOPE/4673
Urban Resource Institute (718) 421-4035

Manhattan (New York County)

Barrier Free Living, Inc. (212) 533-4358
Freedom House (212) 400-6470
Genesis (212) 304-1430
Henry Street Settlement (212) 577-7777
New York Asian Women's Center (888) 888-7702
NYANA Center for Women and Families (888) 242-5838
NYC Gay & Lesbian Anti-Violence Project (212) 714-1141
Safe Horizon (800) 621-HOPE/4673
Sanctuary for Families (212) 349-6009
STEPS to End Family Violence (646) 996-9448
Urban Resource Institute (718) 421-4035
Violence Intervention Program (800) 664-5880

Queens

Allen Women's Resource Center (718) 739-6202
Queens Legal Svcs. Domestic Violence Project (718) 657-0424

Safe Horizon (800) 621-HOPE/4673
Violence Intervention Program (800) 664-5880

Staten Island (Richmond County)

Safe Horizon (800) 621-HOPE/4673
Safe Passage at Seamen's Soc. for Children (888) 837-6687

Niagara

Alternatives to Domestic Violence (716) 433-6716
Passage Program Family/Children's Services. (716) 285-6984
YWCA of the Tonawandas (716) 692-5643

Oneida

YWCA of the Mohawk Valley (315) 797-7740

Onondaga

Domestic Violence Prevention Education Program (315) 427-3315
The Salvation Army of the Syracuse Area (315) 479-1332
Vera House, Inc (315) 468-3260

Ontario

Family Counseling Svc. of the Finger Lakes (800) 695-0390

Orange

Safe Homes of Orange County (888) 503-HOPE/4673

Orleans

Orleans County Dept. of Social Services. (866) 314-7233
ROI Domestic Violence (866) 314-7233

Oswego

Services to Aid Families (315) 342-1600

Otsego

Violence Intervention Program (607) 432-4855

Putnam

Putnam Northern Westchester Women's Resource Center (845) 628-2166

Rensselaer

Unity House: Emergency Services (518) 272-2370

Rockland

Rockland Family Shelter (845) 634-3344

Saratoga

Domestic Violence and Rape Crisis Services (518) 584-8188
Mechanicville Domestic Violence Advocacy Program (518) 664-4008

Schenectady

YWCA of Schenectady (518) 374-3386

Schoharie

Domestic Violence Program of Schoharie County (518) 234-3581

Schuyler

First Steps Victim Services (607) 742-9629

Seneca

Family Counseling Services of The Finger Lakes (800) 695-0390

Seneca County Community Counseling Center (800) 688-7188

St. Lawrence

St. Lawrence Valley Renewal House (315) 379-9845

Steuben

The Net Shelter & Domestic Abuse Program (800) 286-3407

Suffolk

Brighter Tomorrows, Inc (631) 395-1800

Family Counseling Service (631) 288-1954

Suffolk County Coalition Against Domestic Violence (631) 666-8833

The Retreat, Inc (631) 329-2200

Victims Information Bureau of Suffolk (631) 360-3606

Sullivan

Safe Passage Domestic Violence Program (845) 292-5700

Tioga

A New Hope Center (800) 696-7600

Tompkins

The Advocacy Center of Tompkins County (607) 277-5000

Ulster

Family of Woodstock Inc. (845) 338-2370

Warren

Domestic Violence Project (518) 793-9496

Washington

Domestic Violence Project (518) 793-9496

Wayne

Victim Resource Center of the Finger Lakes, Inc (800) 465-1172

Westchester

My Sisters' Place (800) 298-SAFE/7299

Hope's Door - Northern Westchester Shelter (888) 438-8700

Westchester County Office for Women (914) 995-5972

Wyoming

Wyoming County DSS Domestic Violence Project (585) 786-8904

Yates

Family Counseling Services of the Finger Lakes (800) 695-0390

Rape & Abuse Crisis Svc. of the Finger Lakes (315) 536-2897

Additional New York State Resources:

New York City Gay & Lesbian Anti-Violence Project

- Spanish & English Hotline (212) 714-1141
- Spanish & English TTY (212) 714-1134

New York State Coalition Against Domestic Violence (518) 482-5465

Growing up Healthy Hotline/Maternal and Child Health Hotline (800) 522-5006

Lifenet for Mental Health and Domestic Violence- English (800) 543-3638

Lifenet for Mental Health and Domestic violence- Spanish (877) 298-3373

New York State Child Abuse and Maltreatment Reporting Center (800) 522-5006

New York State Child Abuse Mandated Reporters Express Line (800) 635-1522

New York State HIV/AIDS Information Services (800) 541-AIDS/2437

New York State Immigration Hotline (OTDA) (800) 566-7636 or (212) 419-3737

New York State Office for the Aging Senior Citizens Hotline (800) 342-9871

New York State Office for the Prevention of Domestic Violence (518) 457-5800

New York State Office of Alcoholism and Substance Abuse Services (OASAS) (800) 522-5353

New York State Office of Temporary and Disability Assistance (OTDA) (800) 342-3009

Legal Momentum Immigrant Women Program (National Number) (202) 326-0040

Prevention Information Resource Center and Parent Helpline (800) 342-PIRC/7472

Victim Information and Notification Everyday (VINE) (888) VINE-4NY/846-3469

New York State Office of Victim Services

- Provides financial compensation to crime victims for certain expenses related to their victimization.
- Toll Free Number (800) 247-8035
- Sorenson Videophone: 877-215-5251
- Main Office, Albany (518) 457-8727
- New York City Office (718) 923-4325
- Buffalo Office (716) 847-7992

For a complete listing of counties with Integrated Domestic Violence Court operations in New York, please visit the Center for Court Innovation's website at www.courtinnovation.org.

