

**COURTROOM
ADVOCATES PROJECT
(CAP)**

**TRAINING
MANUAL**

Summer 2024

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TRAINING AGENDA

All times are approximate.

Understanding Domestic Violence & Cultural Competency	1 hour
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Family Offense Law	1 hour
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Step-by-Step / Mock Interview	2 hours
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I. PREFACE

This training manual accompanies a training session for volunteers and law students participating in the Courtroom Advocates Project (CAP). This manual will also benefit advocates who participate in other programs assisting survivors of domestic violence.

Thank you for joining us in advocating for survivors of domestic violence. Please let us know if you have any comments or suggestions.

THE COURTROOM ADVOCATES PROJECT

LEGAL ADVOCATES FOR VICTIMS OF DOMESTIC VIOLENCE

II. CAP OVERVIEW

The Critical Need for Advocates in Family Court

Victims of domestic violence typically enter Family Court seeking Orders of Protection against their abusers on the heels of an incident of severe violence. They are often frightened, isolated by their abusers from family and friends, and at a heightened risk of life-threatening retaliation. They are unaware of their legal rights and the remedies available to them. Nonetheless, they are expected to file their family offense petitions with little assistance and appear before judges alone. Intimidated by this process and uneducated about the legal significance of their actions, many domestic violence victims never return to court to obtain final protective orders.

The Courtroom Advocates Project

The Courtroom Advocates Project (CAP) is a unique program that recruits, trains, supervises, and mentors law students and other volunteers to fill this gap in advocacy, education, and services in New York City's Family Courts. Housed at Sanctuary for Families, one of New York's oldest and largest provider of social services for domestic violence victims, CAP provides victims with trained, supervised law students who assist them with the legal advocacy, education, and safety planning that they need to start new lives. Student Advocates assist domestic violence victims by helping them draft and file their petitions, advocating for them during court appearances, educating them about their legal rights and remedies, and providing them with safety planning and referrals to community resources, such as shelters and counseling.

Advocates interview domestic violence victims and help them draft their petitions. This initial advocacy significantly improves the quality of the petitions filed so that they accurately allege the family offenses committed and request the necessary temporary relief sought. Advocates then accompany petitioners when they appear before Family Court judges and assist them in requesting appropriate relief from the court, such as exclusion of the abuser from the home or temporary child support. Advocates accompany petitioners to court on their adjourned dates and assist them with their cases as they move forward.

Since CAP began operating in Manhattan Family Court in July 1997, CAP has assisted over 10,500 pro se litigants filing petitions in Family Court, and over 12,700 advocates have been trained. With the help of a grant from the U.S. Department of Justice under the Violence Against Women Act (VAWA), CAP established projects in Queens, Brooklyn, and the Bronx's underserved Family Courts in 2000. In 2003, CAP expanded the program to Staten Island with the Seamen's Society as a partner. CAP's experienced staff attorneys from Sanctuary for Families' Legal Center Services and the New York Legal Assistance Group (NYLAG) supervise advocates in court and represent victims when their cases become litigated or too complex for student advocacy alone.

COVID-19 and CAP

With the arrival of the COVID-19 pandemic, CAP has shifted to address client needs as the courts have transitioned towards remote hearings for Temporary Orders of Protection. CAP has created a remote model to train CAP advocates to interview survivors and assist them in drafting and filing their family offense petitions remotely. CAP advocates assist pro se petitioners by telephone or video conference in drafting their family offense petitions and provide pro se petitioners with support, instruction, and assistance in filing and service of process. This initial advocacy significantly improves the quality of the petitions filed so that they accurately allege the family offenses committed and request the necessary temporary relief sought.

Training and Supervision

CAP trains advocates through a four-hour intensive training session accompanied by a comprehensive training manual. CAP advocates are supervised virtually throughout the process and receive ongoing supervision from experienced family law attorneys.

A. ROLE & RESPONSIBILITIES OF CAP ADVOCATES

CAP advocates must be aware of the weighty responsibilities they undertake when they register for this program. The petitioners they assist rely on them for both their order of protection legal needs and moral support. In addition, this program relies on the support of the court system, which demands that CAP advocates be dependable and competent. CAP advocates must therefore maintain the highest level of responsible conduct at every juncture of their participation in this program.

Timing and Structure of the Program

Unlike previous years, due to the COVID-19 pandemic, CAP advocates will not be interviewing petitioners and drafting family offense petitions inside the courthouses. CAP advocates will be assigned cases after they are referred. **Advocates should monitor their e-mails, as cases will be assigned on a rolling basis.**

Once the case is assigned, the CAP advocate should reach out to their petitioner and schedule a time for a phone or video chat interview that works for both the petitioner and the CAP advocate. **This should occur no later than 24 hours** following the assignment of the case, absent extenuating circumstances. The supervising attorney will not be on that call, but the CAP advocate should be sure to contact their supervising attorney with any questions during or after the interview.

Once the interview is complete, the CAP advocate should prepare their first draft of the family offense petition, using the Family Offense Petition template that their supervising attorney will provide. Once the draft is complete, the CAP advocate should e-mail a copy of the draft petition to their supervising attorney, who will edit the petition. Edits can include stylistic and/or substantive changes, as well as comments with questions that may require follow-up and/or clarification with the petitioner.

It is completely normal for the CAP advocate to have at least 4-5 follow up conversations with

their petitioner based upon comments from the CAP supervisor. The CAP advocate should plan to follow-up with the petitioner and make any required changes to the petition when they (and the petitioner) are available to do so. Once those changes are complete, the CAP advocate should send additional drafts of their petition to the supervising attorney for review. *Please see the “DRAFTING THE FAMILY OFFENSE PETITION USING THE TEMPLATE” section for more details.*

After several rounds of review and edits, likely spanning several days if not up to a few weeks, the CAP supervisor will inform the CAP advocate that the petition is ready to file. Prior to filing the petition with the court, the CAP advocate will need to affix the petitioner’s signature to the finalized family offense petition and save it as a PDF (this will be the copy that is filed with the court). The CAP advocate will also need to prepare the petitioner for the initial appearance. *Please see the “PREPPING PETITIONER FOR THE VIRTUAL FIRST APPEARANCE” section for more details.*

The CAP advocate will then file the petition on behalf of the petitioner with the Court. *Please see the “FINALIZING AND FILING THE PETITION” section for more details.* **The CAP advocate should be available on the filing date to answer questions the petitioner might have, and to follow up with the Court as needed.** The CAP advocate will then follow up with the petitioner to ensure he/she received the correct papers from the Court, assist with service, and prepare for the adjourn date.

Responsibilities

The CAP advocate is required to assist the petitioner with their case from the date of filing through the next court date or until the petitioner is provided with the services of a lawyer. After an attorney has been assigned, the CAP advocate may, but is not required to, continue to work on the case by assisting the attorney in preparing for litigation.

CAP Advocate responsibilities consist of the following:

Responsibilities to Petitioners

- Educating petitioners about Family Court procedures and the steps necessary to obtain an Order of Protection
- Educating petitioners about their rights and the remedies/ relief available
- Helping petitioners prepare their family offense petitions
- Safety planning
- Referring petitioners to needed resources
- Explaining what to do if respondent violates the Order of Protection
- Instructing petitioners about effecting service of process
- Maintaining contact with petitioners after the first court date and preparing petitioners for the adjourn date
- Explaining evidence collection
- Supporting petitioners leading up to court for their (virtual) adjourn dates
- Alerting CAP supervisors of any immigration issues for referral to legal services.

Responsibilities to the Program

Each Advocate’s conduct will reflect upon the program and the domestic violence victims we serve. Advocates’ responsibilities include:

- Being open and available on scheduled CAP assignment slots

- Drafting a CAP case summary and sending it to the CAP Supervisor within 24-48 hours of the first court date (see sample included in this manual)
- Contacting the Petitioner at least three times **AFTER filing**: (a) to follow up on service 1 week after the first court date, (b) to prepare for the court date and to get updates 1 week in advance; (c) to check in about a plan for the court date 24 hours in advance
- Calling or emailing your CAP Supervisor to check in with any questions for the adjourn date 1 week before court
- Emailing your CAP Supervisor to provide an update on what happened on the adjourn date

Role of an Advocate

The role of an Advocate is to educate litigants about their legal rights and options and to assist them in achieving their goals. Advocates are not attorneys and should at no time provide legal advice to litigants. Advocates must at all times be clear that they are advocates, not attorneys.

B. ADVOCACY WHEEL



CONFIDENTIALITY- As a first step, confidentiality must be established. Discussing the possibility of victimization must occur in private. A victim of domestic abuse will not typically disclose a history of violence in the presence of her perpetrator or other family members. If she discloses the violence in his presence, it is likely she will suffer retaliation.

ACKNOWLEDGEMENT INJUSTICE- Let her know that the violence perpetrated against her is not her fault. No one deserves to be abused. No one has the right to use violence and intimidation to control another person in an effort to keep them in a relationship. What happened to her is not her fault.

AUTONOMY- Empowerment advocacy is based on the fundamental belief that victims of domestic violence have the right to control their own lives. In the process

of victimization, control has been taken away from them. In your interaction with a victim, you can give her that control back by respecting decisions and reaffirming that she has the right to live free of violence and coercion.

SAFETY PLANNING- What are the victim's options? Does she want to go home, to the home of a friend or family member, or to the local safe house or shelter? What has she done to protect herself in the past? If she's returning home to her partner, can she plan for a quick escape should the violence begin again? Can she call law enforcement officials for protection?

PROMOTE ACCESS TO COMMUNITY SERVICES- Know the resources in your community. Inform her of services available that may be able to provide additional assistance. Is there a program for battered women in your community?

C. IMPORTANT PHONE NUMBERS AND CONTACT INFORMATION

Please find the contact information for the CAP team below:

Sanctuary for Families

Betsy Tsai, Director, Courtroom Advocates Project
btsai@sffny.org
(917) 572-9793

Anne Glatz, Senior Staff Attorney, Courtroom Advocates Project
aglatz@sffny.org
(646) 470-1594

Marisa Gold, Senior Staff Attorney, Courtroom Advocates Project
mgold@sffny.org
(212) 624-0986

Maya Wernikoff, Senior Project Assistant, Courtroom Advocates Project
mwernikoff@sffny.org
(212) 624-1008

Feel free to reach out with any and all questions! Good luck!

D. STEP BY STEP GUIDE FOR CAP ADVOCATES

This outline provides a general overview of the CAP workflow. Of course, every case and client is different and this workflow may have to change to accommodate the client's needs.

1. Pre-Referral

Violent Incident(s) / Commission of Family Offense



Petitioner calls SFF Helpline or contacts a Family Justice Center (FJC) for assistance. Petitioner may also contact a partner nonprofit organization such as Safe Horizon to be referred.



CAP team reviews client information to evaluate if case is an appropriate CAP referral.

2. Referral

CAP Supervising attorney will evaluate if a case is appropriate to assign to a CAP advocate.



Once a referral is approved, it will be assigned to an advocate team on a rolling basis. When you receive your CAP referral information, **please reach out to your petitioner within 24 hours to schedule your first interview.** Your CAP Supervisor will be available for any questions.

3. Call Petitioner

After receiving your CAP referral information, you should reach out to the petitioner right away to schedule your first interview. Below is a very high-level overview of points to cover during your first call, but *please review How to Conduct a CAP Interview, for more substantive details about each of the following points.*

- Introduce yourself; clarify your role as an advocate, NOT an attorney, and explain the purpose of your call;
- Explain the process of getting an OP in Family Court (virtually right now, due to COVID);
- Collect the demographic data that you will need when you help the client file (to the extent that data is not already in your referral information);
- **Inquire about the history of violence and help the petitioner outline the key facts relating to the incidents you want to include in their petition, including any aggravating circumstances;**
- Talk about the relief available and ask what they want;
- Talk to the petitioner about any other issues you spot – safety concerns, reporting behavior to the police, whether they anticipate any service issues, issues with children on the Order of Protection, etc.;
- Don't forget to utilize the referral information provided in your interview. Several incidents and details will already be provided in the referral information provided – please use this information as a jumping point for your interview!

4. Draft the Petition

You should begin drafting the family offense petition using the Family Offense Petition Template, available in the Appendix of this Manual (also provided in your initial referral email).



Within a few days of the referral, you should send your first draft petition to your CAP Supervisor for review and edits.



Your CAP Supervisor will send edits and comments back to you and may call you to go over the comments together. Many comments will require a return call to the petitioner to clarify some points and therefore will require additional reviews from your CAP Supervisor.



After the petition is finalized, you should .pdf the petition and send the finalized petition to the client for review. The petitioner must confirm that everything in the petition is accurate. We strongly recommend you send the petition and immediately call the petitioner to go over it together.



If the petitioner would like to make any edits to the petition, you will make those edits, .pdf the updated petition, and send again to the petitioner. Once the petitioner confirms that everything is accurate you can move on to finalizing the petition.

5. Finalize and File the Petition

The petitioner can sign the petition using the e-signature function on Adobe Acrobat.² For many petitioners this will be difficult because they won't have access to a computer. For those clients you can ask them to sign a piece of paper, send you an image of their signature, and affix the signature to the petition.³



Before you help the petitioner file you should speak with petitioner to prepare them for their court appearance, including what to expect and what relief they should advocate for.⁴ Send the petitioner a follow- up e-mail summarizing the preparation call.⁵



Within a week of the referral* (see **NOTE at the end of this section**) assist the petitioner in filing the petition with the court.

6. Virtual Appearance

The Petitioner appears virtually before the intake judge on the same day that they file the petition (unless the petition is filed late in the day, in which case they will most likely be seen the following day). *Note: CAP advocates may (but are not expected to) appear with petitioners on their first virtual appearance for the limited purpose of helping them advocate for an appropriate order of protection. If you are*

² Use the "Edit" function, then chose "Fill & Sign," then "Sign," and then the petitioner can use the "Draw" tool to sign her name electronically.

³ Note that courts are less stringent right now about signatures so it's ok if a pasted signature doesn't look perfect.

⁴ You want to talk to petitioners before they file so that they are prepared if the court calls them immediately after the petition is filed.

⁵ See sample email in the Prepping Petitioner For The Virtual First Appearance section starting on pg. 47.

interested in appearing, please let your CAP Supervisor know.



Assuming the petitioner obtains an ex parte temporary order of protection (“TOP”) at their first appearance, the court will send copies of the TOP and Summons through the eNotify portal (guide included later in the Manual)



Follow up with the petitioner to find out what happened at the court appearance and ask them to send you the TOP. *Note: Petitioners will receive an encrypted e-mail from the Court through eNotify where they can download a copy of the Temporary Order of Protection. Due to its security protocols, this email cannot be forwarded; please ask them to download the papers and send them to you in a new email.*



Forward the TOP, Summons, and any other documents to your CAP Supervisor.



Have a call with the petitioner to go over what happened during the virtual appearance, ask if they were assigned an attorney, review the TOP, discuss service and effectiveness of the TOP, discuss what to do if the abuser violates the TOP, and let the petitioner know what to expect going forward. Help the petitioner sign up to receive alerts from the sheriff’s office when the TOP is served.



Send the Resource Packet (available in the Appendix) to the petitioner.



Send a CAP case summary to your CAP Supervisor.

7. Service of Process Assistance

CAP advocates are required to assist petitioners with service of process guidance to make sure that service of the order of protection is effectuated as soon as possible.

- Explain to the petitioner the importance of service of process and explain how they can effectuate service;
- Sign the petitioner up for the Sheriff Notification System if the sheriff is going to serve the papers;
- Call the sheriff’s office to confirm service;
- Advocate with the sheriff’s office to continue attempting to serve the respondent if they have been unsuccessful in finding respondent;
- Help the petitioner run a public records search to try to find the respondent if the petitioner does not know the respondent’s current address; and/or
- Prepare the petitioner to seek alternative or substitute service on their next court date (discussed in more detail further in the Manual)

Please make sure that you send the following documents/do the below follow-up AFTER your assigned petitioner’s case is filed:

- After the petitioner’s initial court appearance, **be sure to send them the Petitioner Resource Guide, located in the Appendix.** The Resource Guide is also available in Spanish, French, Mandarin, Korean, Russian, and Bengali, upon request. If your petitioner needs the Resource Guide in a different language than those listed above, please let your CAP supervisor know.

- Contact the Petitioner at least three times **AFTER filing**: (a) to follow up on service 1 week after the first court date, (b) to prepare for the court date and to get updates 1 week in advance; (c) to check in about a plan for the court date 24 hours in advance. *(If you are unable to contact the Petitioner any of these times, please let your supervising attorney know!)*
- Send your Supervising attorney: 1) the Petitioner Information Sheet and 2) your CAP summary.

***A NOTE ON TIMING/UNRESPONSIVE PETITIONERS**

It may be possible that your petitioner becomes unresponsive at one point along this process. This is not uncommon and can be due to many factors, such as pressing childcare, employment, housing, or other needs that the petitioner is addressing in order to secure and maintain their and their family's safety.

If it has been more than several weeks and your case has still not been filed, OR your petitioner has been unresponsive for a lengthy period of time, ***please be in touch with your CAP supervisor for advice on next steps***. Advocates should send the petitioner the most updated version of the petition along with self-filing instructions. At this point, the CAP supervisor can take back the case and send a follow-up email to the petitioner in case they choose to go forward with their petition in the future.

3 Possible Scenarios at Adjourn Date (see Preparing for the Adjourn Date):

(1) Respondent Does Not Appear:

- a) Advocate/petitioner requests inquest. Inquest is held⁶ and the petitioner testifies; court makes findings; and Final OP is either granted or not.



Advocate drafts brief email summary of what occurred on the adjourn date and sends it to CAP Supervisor

(2) Respondent Appears:

2 Possible Outcomes

- a) Respondent contests petition. A trial follows at a future court date – this can be brief or can take several adjourn dates; or
- b) Parties negotiate and settlement is reached (i.e. – Respondent consents to an order of protection)



Advocate drafts brief email summary of what occurred on the adjourn date and sends it to CAP Supervisor

⁶It is extremely unlikely that an inquest will be held on the first adjourn date. It's much more likely that the CAP advocate/petitioner requests an inquest, a notice of inquest is sent to the respondent, and an inquest is held on a later date, to give the respondent an additional chance to respond and be available. TOP is extended between court dates.

III. PROVIDING PRO SE ORDER OF PROTECTION ASSISTANCE

A. UNDERSTANDING FAMILY OFFENSES AND ORDER OF PROTECTION PROCEEDINGS

Seeking an Order of Protection in Family Court

The victim/petitioner files a family offense petition (e.g. a petition seeking an Order of Protection) that sets forth the incidents of abuse. The petition must make out a prima facie case for at least one family offense.

What is a "Family Offense"?

The petitioner must establish at least one family offense in order to obtain an Order of Protection. Article Eight of the Family Court Act defines a family offense as:

“acts which would constitute 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, reckless endangerment, assault in the second degree, assault in the third degree, attempted assault, 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, criminal obstruction of breathing or blood circulation, strangulation in the second degree, strangulation in the first degree, degree, identity theft in the second degree, identity theft in the first degree, grand larceny in the fourth degree, grand larceny in the third degree, coercion in the second degree, coercion in the third degree, unlawful dissemination or publication of an intimate image.”⁷

See the Appendix for the Family Court Act and the Penal Law definitions of these offenses.

- **PRACTICE NOTE:** §812 Disorderly conduct as defined in Art. 8, is NOT limited to a public space.

Choice of Forum (In what type of court may a domestic violence victim seek help?)

Victims of a family offense have a choice to proceed in either the Family Court, Criminal Court, or both.

The victim may proceed in Family Court if:

- a. The victim and abuser are legally married;
- b. The victim and abuser were formerly married;
- c. The victim and abuser have a child in common, regardless of whether they have been married or lived together at any time;
- d. The victim and abuser are blood relatives or related by marriage; or
- e. **The victim and the abuser are or were in an intimate relationship: regardless of whether such persons have lived together at any time.**

⁷ N.Y. Fam. Ct. Act § 812(1) (Consol. Supp. 2003).

Factors the court may consider in determining whether a relationship constitutes an "intimate relationship" include but are not limited to:

- a. The nature or type of relationship, regardless of whether the relationship is sexual in nature;
- b. The frequency of interaction between the persons; and
- c. The duration of the relationship.
- d. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship".

Venue (In what county does a victim seek relief?)

A victim seeking a Family Court Order of Protection may go to the Family Court in the borough:

- a. Where the victim lives;
- b. Where the abuser lives; or
- c. Where the abuse took place.⁸

A victim may also attempt to have their abuser prosecuted in Criminal Court for crimes committed by filing a police report against the abuser, which may result in the abuser being arrested and the Criminal Court issuing a criminal Order of Protection. The District Attorney's Office has discretion regarding which cases to prosecute. The victim should begin the process by either calling the police during or directly after an incident and trying to have the abuser arrested or by filing a complaint in a police precinct. An arrest or complaint will trigger a police investigation, which may or may not result in prosecution.

How do victims decide between Family Court and Criminal Court?

There are a number of differences between Family and Criminal Court:

1. First, in Family Court, the victim proceeds with their own cases and is a party to the case. They have more control over the proceedings and may withdraw their petitions at any time. In Criminal Court, however, the victim is only a complaining witness (not a party), because the case is actually brought by the state. The district attorney prosecutes the case and is the one who decides whether it goes forward.
2. Second, there are different burdens of proof in Family and Criminal Courts. In Family Court, the victim need only prove by a preponderance of the evidence that the events alleged actually occurred. In Criminal Court, the State has the much higher burden of proving the defendant guilty beyond a reasonable doubt.
3. Third, there is a difference in the relief available to the victim. In Family Court, the victim obtains an Order of Protection that may be up to five years in duration (depending upon aggravating circumstances) and may include orders for child custody, supervised visitation, child support, etc. In Criminal Court, the victim gets an Order of Protection only, since the Criminal Court has no jurisdiction over custody, child support or visitation. The Criminal Court defendant, however, may get a criminal record, abusers' program, probation, and potential jail time.

Ultimately, the victim may proceed in either Family Court or Criminal Court, or they may proceed in both courts simultaneously or consecutively. If the victim pursues their case in both criminal court and

⁸ N.Y. Fam. Ct. Act § 818 (Consol. 2003). Starting a proceeding in Family Court does not disqualify a victim from starting a second proceeding in Criminal Court, or from switching from Family Court to Criminal Court at a later time as long as the victim meets the requirements for both courts (see Section B above). N.Y. Fam. Ct. Act § 813(3) (Consol. Supp. 2003).

Family Court, their case may be heard in the Integrated Domestic Violence Courts (IDVC). These courts are located within the Criminal Court buildings of every borough in NYC. Each IDVC has the authority to handle family, criminal, and matrimonial matters. The cases transferred to the IDVC generally fall under three different circumstances:

- a. The underlying incident forms the basis of the family offense petition and the criminal action. IF the abuser is arrested, the Criminal and Family Court cases should be transferred to the IDVC. This will typically occur in the following manner: the victim files a domestic incident report (DIR), the police refer the victim to Family Court to get an Order of Protection, and the abuser has not been arrested yet. Once the abuser is arrested based on the DIR filed, then the criminal case and Family Court cases should both be transferred to the IDVC.
- b. The victim has a Family Court Order of Protection that is violated by the abuser, and the abuser is arrested. Once the abuser is arrested, the case should eventually be transferred to the IDVC.
- c. A criminal case is pending for abuse where the victim is the complaining witness and subsequently one of the parties files for custody/visitation, for an Order of Protection, or for divorce. Then, the case should be transferred to the IDVC.

Filing a Family Offense Petition and Getting a Temporary Order of Projection

The victim/petitioner initiates a case by filing a family offense petition (e.g. a petition seeking an Order of Protection) that alleges at least one family offense. The petition should include incidents of abuse and should include enough detail to (i) make out one or more family offenses and (ii) give the respondent sufficient notice of each allegation. For example, incidents should include dates (or approximations) and locations. The petitioner should be particularly careful to allege **aggravating circumstances** if they exist. The presence of aggravating circumstances may make the petitioner eligible for a five-year order of protection (as opposed to the more typical two-year order of protection).

Aggravating circumstances (FCA §827)

Aggravating circumstances include: 1) physical injury or serious physical injury to the petitioner caused by the respondent; 2) the use of a dangerous instrument against the petitioner; 3) a violation of prior order(s) of protection; 4) prior convictions for crimes against the petitioner; 5) exposure of any family or household member to physical injury by respondent; or 6) other “like incidents,” behaviors, and occurrences which, in the court's opinion, constitute an immediate and ongoing danger to the petitioner or any member of the petitioner’s household (usually referring to incidents that occur in front of any children).⁹

The CAP petitioner will usually be heard by the court on the same day they file the petition (depending on when the petition is filed – if before 2/3pm, they will likely be heard the same day; if after, they will likely be pushed to the next day). With the courts closed in person right now, that means that the petitioner will make a virtual appearance before a judge where they will apply for an ex parte Temporary Order of Protection (“TOP”), which the judge will grant or deny that day.¹⁰ The TOP may contain any of the relief available under a permanent Order of Protection, with the exception of restitution, probation, and the abusers program.¹¹ In addition, the court may (but is relatively unlikely to)

⁹ N.Y. Fam. Ct. Act § 827(a)(vii) (Consol. 2003).

¹⁰ N.Y. Fam. Ct. Act § 828(1) (Consol. Supp. 2003).

¹¹ Discussed in Section H below.

award temporary child support without an inquiry into need or assets.¹² The judge will also issue a summons for the respondent to appear in court on a specific date.

Serving the TOP on Respondent

Since the Temporary Order of Protection (“TOP”) is usually obtained ex parte (without the other party present), a copy of the Summons, Petition, and TOP must be served on the abuser/respondent so that they have notice of the allegations against them and may appear at the next court date.

Important: The TOP only becomes a valid legal document when it has been served on the respondent. IF the order excludes the respondent from the home, the respondent should be served by the sheriff’s office and removed from the home immediately. The petitioner can have their locks changed for free by **Project Safe with Safe Horizon (only eligible once TOP has been issued, phone: 347-328-8069).**

Service must be made at least twenty-four hours before the next court date. If service is made later than seventy-two hours before the hearing, and if the respondent requests it, the court may adjourn until at least seventy-two hours after the respondent received service.

The respondent must be served personally by someone over the age of 18 but may not be served by the petitioner. The respondent cannot be served via mail or other means, without explicit court authorization for alternative service. Someone must hand the documents to the respondent directly.

There are three ways the petitioner can opt to have service performed:

- a. Make arrangements for service directly with the local sheriff’s office.
 1. This can be done by the court, so at the first appearance petitioner should request/confirm that the court will forward the papers to the sheriff for service. The court will typically do this if the petitioner knows where respondent lives. The court may decline if petitioner is unsure where respondent is currently living.
 2. The petitioner can contact the sheriff on their own to request service (the sheriff should not charge a fee for serving papers if an Order of Protection is included in the papers being served), but it is much easier for the court to do it.
- b. Arrange for someone the petitioner knows to serve the respondent; or
- c. Arrange for a process server to serve the papers for a fee.

If the petitioner chooses to use the sheriff’s office, typically, the court will send a copy of the Order of Protection directly to the sheriff. The petitioner will also receive copies of the order and will be directed to return to court on the adjourn date. The sheriff must attempt service three times, although it may take some advocacy from the petitioner/CAP advocate to ensure that this happens. Once service is complete, the sheriff’s office will complete an affidavit of personal service. If they fail to serve the respondent, then the office will provide an affidavit of attempted service for the petitioner. This should be sent directly to the court before the petitioner’s adjourn date, but the petitioner (or CAP advocate) may want to call the sheriff’s office to ensure the affidavit of service or affidavit of attempted service has been

¹² The court may issue a temporary order of child support in “an amount sufficient to meet the needs of the child.” N.Y. Fam. Ct. Act. § 828(4) (Consol. 2003). However, this relief is not normally granted.

submitted to the court.¹³

The petitioner can check on the status of service at: <https://sheriff-assist.org/>. Click on “Sign Up for Order of Protection Notification.” Enter the Court Type on the right side and the Order Number and Docket Number from the Temporary Order of Protection.

Sheriff Offices – Locations and Numbers

Bronx: 3030 Third Avenue, 2nd Floor, Bronx, NY 10455 — (718) 993-3880

Brooklyn: 210 Joralemon Street, 9th Floor, Brooklyn, NY 11201 — (718)-488-3545

Manhattan: 66 John Street, 13th Floor, NY, NY 10038 — (212)-487-9734

Queens: 30-10 Starr Avenue, LIC, NY 11101 — (718)-707-2170

Staten Island: 350 St. Marks Place #409, Staten Island, NY 10301 — (718)-815-8407

If a CAP advocate has difficulty reaching the sheriff, they should contact their supervising CAP attorney and CAP Project Assistant for assistance.

If the petitioner does not want the sheriff to serve the respondent, they must arrange service by someone who is eighteen years of age or older. Service of an Order of Protection may take place on any day of the week at any time of day or night. The petitioner cannot do it themselves, nor should the CAP advocate attempt to serve the respondent for them. Whomever the petitioner elects must complete an affidavit of service and have it notarized.

No matter which option the petitioner chooses, if service is unsuccessful (e.g. the sheriff cannot locate the respondent or the respondent refuses to open the door or respond to the sheriff) the petitioner may return to Family Court on their given court date to request more time to make service, to request substituted service (e.g. by text, social media service, or mail to the respondent’s last known mailing address), and to get an extension of their Temporary Order of Protection. The petitioner must present reasons for the failure of service. The petitioner may also provide the court with an affidavit of attempted service. If the respondent ignores or avoids service, the court may issue a bench warrant to bring the respondent before the court.

A process server may also serve the respondent for a fee. Please ask your CAP supervisor for recommended process servers if the petitioner would like to serve the respondent via process server. (We usually recommend process servers as a later resort, after the sheriff and family/friends if possible).

¹³ See Laws of 2007, chapter 36.

B. PREPARING FAMILY OFFENSE PETITIONS

The CAP advocate will help the petitioner to prepare their family offense petition and should carefully review the sample petition directly following this section. There is also a template family offense petition in the Appendix that the CAP advocate should use when drafting.

1. Family Offenses Must be Alleged

Family Court Act §821 provides that a petition for an Order of Protection must allege that at least one family offense has occurred. Although it is important to know the elements of the family offenses, and to keep them in mind when preparing the petition, the CAP advocate does not need to specifically label them in the petition. All they need to do is describe the facts with specificity.

2. How to Allege the Incidents of Violence

Incidents should be described in reverse chronological order, beginning with the most recent incident. The CAP advocate should assist the petitioner in providing the court with a complete and accurate description of the incident(s) of domestic violence, including the date(s) (or approximate date(s)), place(s) of the occurrence(s), and any injuries sustained during the incident(s).

The petition should almost always use the language “*on or about*” before the date(s) so that the petitioner is not swearing to the fact that a given incident occurred on that date exactly. Similarly, the phrase “*words to the effect of*” or “*in sum and substance*” should be used when quoting what the respondent yelled or threatened. This gives the petitioner leeway if they remember the timing of the incidents, or the language used, differently when they testify in the case several months down the line. For example, “On or about January 5, 2019, Respondent threatened Petitioner saying words to the effect of, “If you ever leave me bitch, I will find you and cut your throat.”

Each incident should be in paragraph form, and each separate incident should be a separate paragraph. The CAP advocate should list the incidents in the (a), (b), (c), list form, as shown in the Sample Family Offense Petition, on page 36. The last paragraph in the incident list is a “catch- all” paragraph and can summarize the history of abuse between the parties (i.e., describe some of the ongoing abusive behavior that lacks the specificity needed to be a specific incident). For an example of a catch-all paragraph, please see paragraph (f) in the Sample Family Offense Petition on Page 36.

The allegations should be stated using *non-conclusory language*. For example, a petition should NOT read: “Respondent assaulted Petitioner on January 1, 2019.” or “There is a history of domestic violence.” Instead, it SHOULD read: “On or about [date], at [location], Respondent struck Petitioner with a closed fist repeatedly in the face, chest and stomach, causing Petitioner pain and physical injury including, but not limited to, bruises and abrasions on her face, chest, and stomach that lasted approximately two weeks.”

3. Aggravating Circumstances

The petition should describe any aggravating circumstances which, if proven by a preponderance of the evidence, would entitle the petitioner to obtain an Order of Protection that may last for five years. Aggravating circumstances are defined in § 827 of the Family Court Act.

Where applicable, the petition may note that the incidents occurred "in the presence of the children." However, it is CRUCIAL to remember that alerting the court to danger to the children may trigger an ACS investigation, as the court has an affirmative obligation to protect their welfare. **Although ACS is prohibited from removing children of abused petitioners solely or primarily because there has been there has been domestic violence in the home**, untrained ACS case workers may nonetheless blame the petitioner for the violence and threaten to remove the children if, for example, the petitioner does not go into a shelter or take other steps. Additionally, while highly unlikely, it is possible that, once involved with the family, ACS may develop a pretext for intervention to avoid the prohibition. If you identify these issues, please contact your CAP Supervisor. (For more information on Failure to Protect, see the section entitled, "Guide to Interviewing, Discuss Petitioners' Decisions to Pursue a Family Court Case").

A Note on Lethality Factors

The CAP advocate should also highlight the lethality factor "red flags" if they exist. These are patterns of abusive behaviors that are dangerous and increase the risk of homicide. Risk factors include: recent separation (within 6 months), an unemployed or otherwise isolated abuser, abuse to pets/animals, use of a weapon/gun, threats of suicide together with homicide (i.e., "I'm going to kill you and then myself"), drug or alcohol abuse by the abuser, fire setting, specific threats, strangulation, and abuse while the victim is pregnant. If the petitioner discloses any of these red flags, tell your CAP Supervisor ASAP.

PRACTICE NOTE: Strangulation is a form of loss of oxygen caused by closure of the blood vessels and air passages of the neck as a result of external pressure on the neck. Some victims will not identify strangulation as such because they did not lose consciousness, or because even though they had difficulty breathing they weren't cut off from oxygen altogether. They will also sometimes refer to it as "choking" or say, "he put me in a "chokehold." You should explore these things with petitioner as any form of obstruction of breathing is a dangerous form of abuse. See page 44 for more detail on lethality factors and red flags.

4. Other Cases Pending

Include on the petition whether there are any other Family Court, Criminal Court, or matrimonial cases pending between the petitioner and the respondent. The court should be informed of any other proceedings involving the same acts alleged in the family offense petition, i.e., the respondent may have been arrested and already have a criminal case pending against them for acts committed against the petitioner. Petitioner may not know all the details, but you should include as much information as you can.

5. Relief Requested

A family offense petition may include "any reasonable condition" of behavior to be observed by the respondent. Below are some examples of conditions that a petitioner may ask the court to order the respondent to observe. Note that courts can order one or more of the following conditions:

- That the respondent *refrain from assault, harassment, or menacing petitioner and/or the children or committing any other family offense against them.*
- That the respondent *stay away* from the petitioner, the child and any specific location such as the home, business or children's school.

- That the respondent be excluded from the parties' home. Exclusion should only be requested when the respondent and the petitioner live together. In order to obtain such relief, the court must find that there is physical violence in the household, the use of a weapon by the respondent or some other circumstances that indicate immediate danger to the petitioner or the children.
- That the court order the Respondent to ***not interfere with the care and custody of the children***. If the petitioner and the respondent are not married and the respondent father's paternity has not been legally established, the petitioner does not need to ask for a temporary order of custody. In such a case, there is no presumption that the respondent is the legal father, thus the petitioner is presumed to have custody. Paternity is established if the courts have made a determination that the respondent is the father of the children. Paternity may have been established at birth or may be established because the father is paying child support. If paternity has been established, whether or not the petitioner and the respondent are married, the petitioner may want to ask for an order of temporary custody.
- That the respondent ***not telephone, e-mail, or otherwise contact*** the petitioner.
- That the respondent shall refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the petitioner or a minor child residing in the household. (Family Court Act § 842)
- That the respondent may not use or threaten to use a firearm unlawfully against the Petitioner and/or the children, that any such existing license possessed by the Respondent should be suspended, that the Respondent should be ineligible for such a license in the future, and that any firearms in the Respondent's possession should be immediately surrendered (Family Court Act § 841-a(1)(b)).
- Non-dissemination provision (see next section regarding cyber sexual abuse victims).
- That the court issue the petitioner a Temporary Order of Custody. If the court includes in the TOP a provision awarding the petitioner temporary custody, it will last throughout the family offense case and may last for the duration of the final Order of Protection (up to five years). A permanent order of custody cannot be achieved through a family offense case. For that the petitioner will have to file a separate custody petition. Note that this relief is only rarely granted in a Temporary Order of Protection.
- That the court award the petitioner a Temporary Order of Child Support "in an amount sufficient to meet the needs of the child." The petitioner is not required to make a showing of emergency or immediate need. (See Family Court Act §842). This should only be requested in cases where the petitioner has no means of support and will not be getting any support soon. For example, the petitioner should not be on public assistance or receiving child support payments. Note that this relief is only rarely granted in a Temporary Order of Protection.
- That the respondent observe such other conditions as necessary to further the purposes of protection.

Seeking Relief for Victims of Cyber Sexual Abuse/Unlawful Dissemination

Perpetrators of intimate partner violence are increasingly using online platforms or other digital technologies to abuse, exploit, harass, and threaten their victims. This type of abuse includes an array of harassment such as hacking, installation of spyware, stalking, spoofing, identity theft, impersonation (including deep fakes), sexual extortion (colloquially known as sextortion), and the nonconsensual distribution or threat of distribution of sexually explicit images and videos (hereinafter referred to as "cyber sexual abuse" or "CSA").

Cyber sexual abuse, or CSA, is also commonly known as “revenge porn” or “nonconsensual pornography” or “NCP”. Images and videos that become the fodder of cyber sexual abuse may have been obtained consensually within the context of an intimate relationship or without consent (e.g., by using hidden cameras, hacking phones, or recording sexual assaults). CSA has now been codified into Article 8 as a family offense called “Unlawful dissemination or publication of an intimate image,” Penal Law § 245.15. See the Appendix for details.

In cases where the abuser has posted, or has threatened to post, the petitioner’s naked photos online without the petitioner’s permission, or the abuser has created false or harassing profiles/content of the petitioner, the CAP advocate should speak with the petitioner about including such provisions in the family offense petition as:

- **That the respondent is not to post, transmit, or maintain, or cause a third party to post, transmit, or maintain, any images, pictures, or other media, depicting the petitioner in a naked state or participating in any sexual act OR threaten to do the same.**
- **That the respondent is to refrain from using the petitioner’s likeness or impersonating the petitioner on any social media.**

C. FAMILY JUSTICE CENTERS

The New York City Family Justice Centers are a one-stop shop for clients who are seeking free legal, counseling, and/or case management services.



Love Should Not Hurt

Everyone deserves to feel safe and respected in their relationships.

New York City Family Justice Centers

The New York City Family Justice Centers offer **FREE** and **CONFIDENTIAL** help to survivors of intimate partner violence, sex trafficking and elder abuse. You can get social services, legal and criminal justice services from nonprofit agencies that help domestic violence victims in one place.

The Centers welcome people of any:

- Age;
- Immigration status;
- Sexual orientation or gender identity;
- Income level; and
- People with disabilities.

All Centers are open Monday through Friday from 9:00 a.m. - 5:00 p.m.

Interpretation services are available at every Center .

No appointment is needed

NYC Family Justice Center, Bronx
198 East 161st Street, 2nd Floor
(718) 508-1220

Subway: **4 B D** to Yankee Stadium
Bus: BX1, BX2, BX6 and BX13

NYC Family Justice Center, Brooklyn
350 Jay Street, 15th Floor
(718) 250-5111

Subway: **A C F R** to Jay Street
or **2 3 4 5** to Borough Hall
Bus: B25, B26, B38, B54, B57, B61, B62, B65,
B67, B75 and B103

NYC Family Justice Center, Manhattan
80 Centre Street, 5th Floor
(212) 602-2800

Subway: **4 5 6** to Brooklyn Bridge-City Hall
J Z to Chambers Street
N Q R to Canal Street
1 2 3 A C to Chambers Street
Bus: M5, M9, M22 and M103

NYC Family Justice Center, Queens
126-02 82nd Avenue
(718) 575-4545

Subway: **E F** to Kew Gardens-Union Turnpike
Bus: Q10, Q37, Q46 and Q60

NYC Family Justice Center, Staten Island
126 Stuyvesant Place
(718) 697-4300

Close to the St. George Ferry Terminal
Staten Island Railroad to St. George Ferry Terminal
Bus: S40, S42, S44, S46, S48, S51, S52, S61, S62, S66, S74,
S76, S78, S81, S84, S86, S90, S91, S92, S94, S96 and S98

The Family Justice Centers can help with:

- Planning for your safety;
- Applying for public benefits, shelter, housing and other support services and programs;
- Mental health and counseling services for you and your children for mental and emotional well-being;
- Referrals to job training and education programs, as well as education and coaching services to help with budgeting, credit repair, and other financial issues;
- Legal help for orders of protection, custody, visitation, child support, divorce, housing and immigration matters;
- Connecting to trained law enforcement such as NYPD, NYC Sheriff's Office, District Attorney's Office; and
- Childcare, for children three and over while you get services at the Family Justice Center.

For immediate assistance, call 311 or 1-800-621-4673 (HOPE).

Or visit: nyc.gov/nychope or nyc.gov/ENDGBV



D. KEY ISSUES IN SAFETY PLANNING FOR VICTIMS

How Can I Increase the Safety of Myself and My Children On My Own?

One of the best ways to keep safe is to develop your own safety plan that you can depend on in an emergency, when you feel ready to leave, or when you have already separated.

How Can I Create A Safety Plan?

Here are some steps you can take to increase your safety while in an abusive relationship:

Have important phone numbers available to yourself and your children. These include Police 911, 24-hour Domestic Violence Hotline (800) 621-HOPE (4673), friends or relatives and shelters.

Tell a neighbor or neighbors about the violence and ask them to call the police if they hear suspicious noises coming from your home.

Leave extra money, car keys, clothes, and copies of important documents with someone you trust.

Open a savings account in your own name.

Change passwords to electronic devices and accounts; require passwords when unlocking devices (if safe to do so).

Make a list of items to take with you when you leave, including:

- change of clothes/toiletries
- birth certificates, Social Security cards
- school and medication papers
- mortgage payment, receipt of current unpaid bill
- keys (apartment/car)
- children's favorite toys or blanket
- passport(s), green card, work permit
- pictures, jewelry, albums, items of sentimental value
- copies of your abuser's recent pay stubs or income tax return
- identification
- welfare identification
- divorce papers
- lease/house deed
- insurance papers
- driver's license
- address book
- money, bankbook

How can I increase my safety if I have separated from my abuser?

- Change the locks; install steel/metal doors, a security system, smoke detectors and an outside lighting system. **Project Safe, Safe Horizon**, will change your locks for free –their number is 347-328-8069 (call 800-810-7444 for hearing impaired clients).
- Inform neighbors that your abuser no longer lives with you and ask them to call the police if they observe the abuser near your home or your children.
- Tell the people who take care of your children the names of those who have permission to pick them up. Tell them to call the police if your abuser tries to take your children.
- Avoid stores, banks, and places that you used when you lived with your abuser.
- Keep a copy of your Order of Protection on you at all times. Make copies of your Order of Protection and file a copy with your local police precinct, place of employment, children's school, and babysitter.
- Technology safety: change or add passwords to electronic devices and accounts. Reset phone to factory settings (or get new phone and do not transfer personal data over), to avoid possibility of spyware or GPS tracking devices.

- If you feel down and are thinking about returning to a potentially abusive situation, call a friend or relative or attend support groups to strengthen your relationships with other people.
- You can also call the Domestic Violence Hotline at 1-800-621-HOPE for referrals to counseling programs that assist in safety planning.

Safety Tips



Technology Safety Quick Tips

Device	Description / Risks	Safety Strategies
Spyware / Computer & Phone Monitoring Software	<ul style="list-style-type: none"> It enables a person to secretly monitor someone else's entire computer activity. It can be installed remotely by sending an email, photo, or instant message. It runs hidden on a computer. It is very difficult to detect and almost impossible to remove. Some secretly reinstall if removed. It can record and send screenshots (pictures of what's on the screen), all keystrokes typed, web sites visited, emails sent, instant messages (IM), accounts accessed, passwords typed, and more. 	<ul style="list-style-type: none"> When you first get a new computer or phone, increase security by enabling firewalls for your computer, network or phone (see settings) and install or run anti-spyware and anti-virus software; set your computer or device to automatically install updates. Don't open any attachments if you don't know the sender, or you suspect abuse. Instead delete the attachment or have IT staff look at it. Trust your instincts. If someone knows too much about your computer activity, your computer may be monitored. Use a "safer" computer (one the abuser does not have any access to) for private communications and web browsing. Consider changing passwords and creating new accounts on another computer. Do not access those accounts or use those passwords on the monitored computer.
Keystroke Logging Hardware	<ul style="list-style-type: none"> It provides a record of all keystrokes typed on a keyboard. Someone needs physical access to the computer to install and later retrieve the device with the data log of all your keystrokes. An abuser may use it to see the passwords you type and then be able to access your email, credit card, or bank accounts, etc.. 	<ul style="list-style-type: none"> Has someone fiddled with, fixed, or given you a new part for your computer? Look for a small piece that connects the keyboard cord to the computer; it can also be part of an external keyboard, or something installed inside a laptop. Change passwords on accounts from another computer and do not access those accounts from the compromised computer. With some services, you can ask to get an alert (e.g. fraud alert) if your password gets changed or your account gets changed.
GPS Devices (Global Positioning Systems)	<ul style="list-style-type: none"> They are small, easily hidden, and affordable devices that provide the ability to monitor someone's location. Many cell phones also have GPS devices. They might be used to track your location real-time (as you move) and to map your location history. Depending upon the service or 	<ul style="list-style-type: none"> Trust your instincts. If someone seems to know too much or show up in random places, check for hidden GPS devices or other location tracking services. Consider notifying law enforcement. A device can be hidden in your belongings or vehicle. Check the trunk, under the hood, inside the bumper and seats. A mechanic or law enforcement can also do a search.



Technology Safety Quick Tips

Device	Description / Risks	Safety Strategies
	<p>application used to access GPS data, the stalker may be able to secretly monitor your location via websites or sometimes via their phone. Some devices must be physically retrieved for the abuser to review your location data.</p>	<ul style="list-style-type: none"> ▪ Safety plan around/before removal of any location tracking device, as it may alert the abuser.
Cell & Mobile Phones	<ul style="list-style-type: none"> ▪ Phones can be a lifeline for victims. ▪ Phones can be hidden inside vehicles as listening devices by using the "silent mode" and "auto answer" features. ▪ Most phones have GPS chips and location tracking abilities, which can be used to determine someone's location. Some abusers install additional applications on a cell phone to track your application. ▪ Logs showing phone usage may be monitored on the actual phone or over the Internet via the phone company's online billing record. ▪ Joint phone plans with an abuser may give that person access to phone features and calling log information. ▪ If your phone has a Bluetooth device, the stalker might try to connect with your phone using the Bluetooth to access information on your phone or intercept your communications. 	<ul style="list-style-type: none"> ▪ For additional privacy and safety, consider getting a separate donated phone from a shelter or purchasing a new phone (e.g. a pay-as-you-go phone). ▪ Mechanics or law enforcement can check the vehicle to determine if a phone has been hidden somewhere. ▪ Contact carrier to add a password or code to account to protect from wrongful access. ▪ You can change the phone's location setting to "E911 only" or "911 only" so that the phone company only access your GPS if you dial 911. ▪ Also check if your phone has any applications installed that separately ask to access and use your real-time location, such as for mapping directions. Settings such as "show all/hidden applications" might unveil some hidden applications. Consider turning off or uninstalling these applications. ▪ Use phone settings to change your default Bluetooth password, set Bluetooth to hidden, and turn Bluetooth off. ▪ Always give location information to 911 in an emergency.
Caller ID & Spoofing	<ul style="list-style-type: none"> ▪ Reverse directories can provide location based on a phone number. ▪ Services like Trapcall, can unblock a blocked number without notice. ▪ Caller ID can be spoofed to falsify the number displayed when you get a call. ▪ If you call a person using an Internet phone, your blocked number may be 	<ul style="list-style-type: none"> ▪ Survivors can contact the phone company and ask that their phone number be blocked to protect privacy. Blocking is supposed to prevent your caller ID from displaying. However, even with a blocked number, sometimes your caller ID will still display. Consider using another phone or outgoing phone number. ▪ Regularly test the line by calling other phones to

Technology Safety Quick Tips

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Technology Safety Quick Tips

Device	Description / Risks	Safety Strategies
	displayed.	<ul style="list-style-type: none"> ensure it is blocked. Use an Internet phone (i.e., Skype) or a pay-as-you-go phone purchased with cash to make calls if you are worried about your number / location being revealed.
Faxes	<ul style="list-style-type: none"> Fax headers include sender's fax number, which can be used to determine location thru reverse look-up. Fax machines often now have hard drives and extensive memory. Consider privacy, confidentiality and privilege issues when deciding what fax machine to use. Electronic faxes (e-fax) are sent through the Internet as email attachments and, like all email, can be intercepted. Also because e-faxes get sent via a 3rd party and are temporarily stored on a 3rd party Internet server, there are different confidentiality and security risks. 	<ul style="list-style-type: none"> Cover sheet can request that the header be removed before forwarding. If it's legal, consider changing the outgoing fax number displayed to a different number on a case by case basis for safety or privacy reasons. Never send personally identifying or sensitive information in an E-Fax. Make sure you know who is receiving the fax. Call ahead. Some fax machines require the receiver to type in a password to see the fax.
Cordless Phones	<ul style="list-style-type: none"> Because cordless phones transmit your conversation wirelessly between the base unit and phones, they can more easily be intercepted by scanners, baby monitors, & other cordless phones. If you do not unplug the base unit, the phone may continue to broadcast for the duration of a call, even after you switch to a corded phone, allowing for the possibility of continued interception. 	<ul style="list-style-type: none"> Switch to a corded phone before exchanging sensitive information. Unplug a cordless phone from the power source, even after the corded phone has been turned off or hung up to ensure that the current call's conversation won't still be broadcast and overheard. Best practice is to limit information discussed or not use cordless phones for confidential communications with victims.
TTY (Teletypewriters)	<ul style="list-style-type: none"> A communication tool for people who are Deaf or hard-of-hearing that connects to a phone line. Can be misused to impersonate someone. All TTYS provide some history of the entire conversation. The history and transcripts of TTY calls might be recorded on paper or electronically. The abuser 	<ul style="list-style-type: none"> Create a code word or phrase to ensure the identity of the person on other end and to avoid impersonation. Regularly clear TTY history unless a cleared history would increase risk. Best Practice: Agencies should clear their TTY memory, avoid printing transcripts, and shred all printed transcripts of TTY calls, unless the victim



NNEOV

Technology Safety Quick Tips

Device	Description / Risks	Safety Strategies
	might monitor this information or misuse it; in some cases, a survivor might be able to introduce a transcript of a threatening TTY conversation as evidence.	explicitly requests that one printed transcript be kept for safety or evidence reasons.
Relay Services	<ul style="list-style-type: none"> ▪ A free service where a third party (operator) facilitates a conversation for a person who is Deaf, hard-of-hearing, or has a speech disability. ▪ Users may access relay services via a video phone, web cam, computer, TTY or other device. They might use a phone line, Internet or cable connection. ▪ Can be used to impersonate someone. ▪ Relay conversations and devices may be monitored. 	<ul style="list-style-type: none"> ▪ Establish secret code words or phrases to ensure identity of person. ▪ If possible, use a "safer" TTY, device, or computer to access relay (one an abuser hasn't had access to). ▪ Be aware that relay conversations might be secretly recorded by an abuser using spyware or video recording. ▪ When possible, meet in person to discuss sensitive information. ▪ Best practice: Relay services are not a substitute for providing interpreters. Agencies should always offer an in person certified sign language interpreter. Additionally, agencies can contract with Video Remote Interpreter (VRI) services. These are not video relay services but use similar technologies; an agency would need to have a high speed connection and video phone or web camera. An agency can contract with a VRI provider to be on call remotely 24X7 in case a survivor arrives and needs an interpreter quickly.
Email	<ul style="list-style-type: none"> ▪ It is like a postcard and is not a private form of communication. ▪ Can be monitored and intercepted in a variety of ways, many times without your knowledge. Stalkers can intercept and monitor email using spyware or by getting your password; they might change your email settings so they can get secretly forwarded or secretly copied (designated as bcc) on every email you send or receive from that account. 	<ul style="list-style-type: none"> ▪ Avoid using email for sensitive or personal information. ▪ If you think your email is being monitored, consider creating an additional new email account on a safer computer. Never access the new accounts on a monitored computer (see above). ▪ When setting up a new email account, don't use any identifying information. ▪ Avoid passwords that others can guess. ▪ If you receive threats by email, save the electronic copies. Keep the emails in the system, but also consider forwarding a copy to another email account. You can also print copies of the email;



Technology Safety Quick Tips

Device	Description / Risks	Safety Strategies
		<p>see if the print version can display the full email header.</p> <ul style="list-style-type: none"> Consider reporting email threats or hacked accounts to law enforcement. These are crimes and the police can use email header information to help trace emails to the original sender.
Hidden Cameras	<ul style="list-style-type: none"> Affordable, accessible, and easy to install, cameras come hidden in various items (clocks, plants, etc.). Can be wired into your house or transmit wirelessly. Can be very difficult to detect. Can create image files that include time, date and location data. Abuser can install camera surveillance and monitor all your activity remotely over the Internet. 	<ul style="list-style-type: none"> Trust instincts. If abuser knows something that can only be seen, a camera may be being used. Camera detectors can help to find wireless cameras that are giving off a signal, but will not detect a wired camera. Law enforcement may help to search for hidden cameras.
Personal Information & the Internet	<ul style="list-style-type: none"> All kinds of public and private organizations, agencies, services, and businesses collect and share information about people. These can include government and nongovernmental organizations, community groups, schools and online sites such as social networking, gaming or job sites. Search engines index the web and create virtual card catalogs. Some search deep into online databases and compile extensive profiles on people. Identifying information may be online without victims' knowledge. Stalkers use the Internet to find information about the victim including the location and contact information of victim. They also use online spaces to defame, target and damage the reputation of the victim. 	<ul style="list-style-type: none"> Do searches on yourself to see what information is available. Be cautious and creative when providing personal information: only provide information that you feel is critical and safe for things like store discount cards. Ask schools, employers, courts and government services about Internet publications. Request that your information and photos not be posted in public directories or online. In court systems, ask up front how your court records can be sealed and not posted online for safety reasons. If you have a restraining order, providing that can expedite these requests.

Technology Safety Quick Tips Page 5 of 5
 Supported by US DOJ-OVW Grant #2007-TA-AX-K012. Opinions and recommendations expressed are the authors' and do not necessarily reflect the views of DOJ.
 © 2009, rev. 2011 National Network to End Domestic Violence, Safety Net Project • www.nnedv.org/safetynet • Email: safetynet[at]nnedv.org • Ph: 202-543-5566

Additional Safety Resources

- In conjunction with the Family Justice Centers, **Cornell Tech** provides free **digital privacy check-ups** where they will help petitioners understand the privacy and security of their devices and check if any spyware is installed. Petitioners should bring their phone, tablets, iPads, laptops, and children's devices to the Family Justice Center nearest to them and request a digital privacy check-up.
- National Network to End Domestic Violence, Tech. Safety Project**, <https://www.techsafety.org/>
- Operation Safe Escape**, <https://www.goaskrose.com>

E. PETITIONER INFORMATION SHEET

Petitioner name: _____ Adjourn Date: _____

Advocate's name _____ Law School or Firm _____ Phone # _____ Email _____

Advocate's name _____ Law School or Firm _____ Phone # _____ Email _____

	Petitioner's info		Petitioner's info
Date of Birth		Employed?	Part-time or Full-time
Confidential Address? Y or N		Amount per week \$	
Home Phone	() -- OK to call? Y N	Employer	
Work Phone & hours	() -- OK to call? Y N	Education level (≥ 8 th gr., some HS, HS/GED diploma, Voc/Tech, some college, Assoc deg., Bach, Adv. deg.)	
Cell Phone	() -- OK to call? Y N	On Public Assistance?	
Email		Disability (SSI)?	
Alternate Number (mom, best friend, etc.)	() -- OK to call? Y N	Sexual Assault Victim?	
Born in US? If not, country of birth?		Current student?	
Petr. Immigration Status? Citiz? LPR? Conditional Lawful Resident?		Title IX concerns? Violence occurred on a campus or relief sought thru a school?	
Native Language? ----- Limited English?	-----	Additional Topics Discussed?	<input type="checkbox"/> Child/Spousal Support <input type="checkbox"/> Custody/Visitation <input type="checkbox"/> Paternity <input type="checkbox"/> Divorce <input type="checkbox"/> Criminal Issues/Violations <input type="checkbox"/> Housing <input type="checkbox"/> Other _____
Ethnicity?		OP Issued? TERMS? (what was she granted?)	<input type="checkbox"/> TOP Granted - Limited <input type="checkbox"/> TOP Granted - Stay Away <input type="checkbox"/> TOP Granted - Exclusion <input type="checkbox"/> Children included in TOP? <input type="checkbox"/> Other _____
ACS been involved? Current? Past? What happened?		Married to RESP? Husband US citizen or Lawful Permanent Resident* (aka green card holder)	
Prior OP's? when?		Is Petr. interested in our immigration advocates calling her?	
Police reports? Attach		ANY other cases pending? Criminal, Supreme, other Family?	

F. SAMPLE FAMILY OFFENSE PETITION

F.C.A. 812, 818, 821

Form 8-2
(Family Offense Petition)

***FAMILY COURT: STATE OF NEW YORK
COUNTY OF QUEENS***

Lynn Ann (DOB 10/02/86),

Petitioner,

-against-

Bob Ann (DOB 5/11/82),

Respondent.

TO THE FAMILY COURT:

File No.:
Docket No.:

PETITION

1. The undersigned Petitioner, respectfully shows that:
2. Petitioner, Lynn Ann, resides at Expressway Room 301, Jamaica, New York.
3. Respondent, Bob Ann, resides at Expressway Room 301, Jamaica, New York.
4. (Upon information and belief), the Respondent **who is the SPOUSE of** the Petitioner committed an act or acts, which constitute: (disorderly conduct) (aggravated harassment in the second degree) (harassment in the first degree) (harassment in the second degree) (menacing in the second degree) (menacing in the third degree) (reckless endangerment) (assault in the second degree) (assault in the third degree) (attempted assault) (stalking in the first degree) (stalking in the second degree) (stalking in the third degree) (stalking in the fourth degree) (criminal mischief) (sexual misconduct) (forcible touching) (sexual abuse in the third degree) (sexual abuse in the second degree) (criminal obstruction of breathing or blood circulation) (strangulation in the second degree) (strangulation in the first degree) (identity theft in the third degree) (identity theft in the second degree) (identity theft in the first degree) (grand larceny in the fourth degree) (grand larceny in the third degree) (coercion in the second degree) (coercion in the third degree) (unlawful dissemination or publication of an intimate image) toward Petitioner, in that:
 - a. On or about October 9, 2019, Respondent returned to the room at the homeless shelter at Expressway Room 301, Jamaica, New York, where the parties are living and began to yell at Petitioner, yelling words to the effect of, "Shut that damn TV off or I am going to hurt you." Respondent grabbed Petitioner by the left arm with force and grabbed her hair with two fists and began to violently shake her head, causing Petitioner to suffer from a severe headache all night and the next day. The incident occurred in the presence of the two-year old child of the parties, who began to scream and cry during the incident. Petitioner called the police, and Respondent left the room. Before the police arrived, the Respondent returned and began kicking the door with force. He left again, and the police arrived. As a result of Respondent's actions, Petitioner feared for her safety and the safety of her child and suffered annoyance and alarm.

- b. In approximately Summer 2019, at the parties' former residence in Queens, New York, Respondent began yelling at Petitioner, calling her words to the effect of "bitch" and a "whore" and punched Petitioner with a closed fist on her left arm, causing Petitioner to be unable to breathe for several seconds and causing severe bruising on her upper left arm that was visible for approximately three weeks. As a result of Respondent's actions, Petitioner feared for her safety and suffered annoyance and alarm.
- c. In approximately Summer 2019, Petitioner and Respondent were in a supermarket near their home when Respondent picked up a lemon and slammed it into Petitioner's face with force, causing pain on the right side of her face. The child was present as were numerous patrons of the supermarket. Petitioner was crying and felt humiliated. As a result of Respondent's actions, Petitioner feared for her safety and the safety of her child and suffered annoyance and alarm.
- d. In approximately January 2019, at the parties' previous residence, the Respondent shook the Petitioner by the shoulders, put both hands around her neck, and strangled her, forcing her to bend backwards and causing her to be unable to breathe and to have redness on her neck that lasted approximately one day. As a result of Respondent's actions, Petitioner feared for her safety and suffered annoyance and alarm.
- e. The Respondent always carries a switchblade with a six-inch blade. He regularly flips the blade open and closed in front of the Petitioner when he is angry, causing the Petitioner to be afraid for her safety and suffer annoyance and alarm.
- f. Throughout the parties' relationship, from approximately February 2014 through the present, Respondent has engaged in a pattern of verbally, emotionally, and physically abusive behavior towards Petitioner, including slapping, kicking, and punching her on a weekly basis. Respondent regularly screams words to the effect of, "I will kill you" and "no one can have you, you are mine" at the Petitioner. Respondent has controlled and isolated Petitioner, refusing to allow her to call or visit her friends or family members, and often takes her cell phone and car keys from her to prevent her from leaving the house. Respondent is incredibly jealous and manipulative and constantly accuses Petitioner of cheating on him, yelling words to the effect of, "slut," "bitch," "whore," and "you cheating liar." Respondent has often screamed at Petitioner and hit Petitioner in front of the parties' young daughter. As a result of Respondent's behavior, Petitioner suffered bruising, pain throughout her body, and recurrent headaches. This behavior has escalated over the past year, occurring with greater and greater frequency. As a result of Respondent's actions, Petitioner feared for her safety and the safety of her child and suffered annoyance and alarm.

5. The following are the names and ages and relationships to the Petitioner and Respondent of each and every child in the household:

<u>Name</u>	<u>Date of Birth</u>	<u>Relationship to Petitioner/Respondent</u>
Elizabeth Ann	2/10/2017	daughter of Petitioner/daughter of Respondent

6. The following aggravating circumstances, if any, are present in this case [Aggravating circumstances shall mean physical injury or serious physical injury to the petitioner caused by the respondent, the use of a dangerous instrument against petitioner by the respondent, a history of repeated violations of orders of protection by the respondent, prior convictions for crimes against the petitioner by the respondent or the exposure of any family or household member to physical injury by the respondent and like incidents, behavior and occurrences which constitute an immediate and ongoing danger to the petitioner or any member of the petitioner's family or household]:

Physical injury or serious physical injury to the Petitioner caused by the Respondent.

The use of a dangerous instrument against Petitioner by the Respondent.

The exposure of any family or household member to physical injury by the respondent and like incidents, behavior and occurrences which constitute an immediate and ongoing danger to the Petitioner or any member of the Petitioner's family or household.

7. Upon information and belief, the following criminal, matrimonial or Family Court proceedings involving the respondent have been filed:

Criminal case pending in Queens Criminal Court, Docket No. C-0000-19. Petitioner filed a police report on or about July 31, 2019 in the 100th precinct; the case is currently pending with an adjourn date of November 17, 2019.

8. Indicate whether a previous application has been made to any court or judge for the relief requested herein and, if so, the relief, if any, granted and the date of such relief:

None/not applicable

9. (Upon information and belief) respondent is licensed or has a license application pending to carry, possess, repair, sell or otherwise dispose of the following firearms [if known, specify type of firearms, type of license(s), date of issuance of license(s) and expiration date(s), whether license has been suspended or revoked and, if so, the date of such action and, if not currently licensed, whether license application is pending]:

Respondent was in the military and owns multiple firearms legally. Petitioner fears that Respondent owns additional unlicensed firearms.

10. (Upon information and belief) Respondent is in possession of the following licenses and unlicensed firearms [specify number and type of firearms and whether licensed or unlicensed, if known];

Respondent owns at least three guns.

11. (Upon information and belief) There is substantial risk that respondent may use or threaten to use a firearm unlawfully against petitioner (and members of petitioner's family or household) for the following reasons:

Respondent has threatened to kill Petitioner, and Petitioner believes that Respondent could use one of his firearms to injure or kill her.

WHEREFORE, Petitioner prays

- (a) that the Respondent be adjudged to have committed the family offense(s) alleged;
- (b) that the Court enter an order of protection, specifying conditions of behavior to be observed by the Respondent in accordance with Section 842 of the Family Court Act, including the following conditions:
 - 1. Respondent is EXCLUDED from the home.
 - 2. Respondent to STAY AWAY from PETITIONER, Petitioner's HOME, and Petitioner's WORKPLACE.
 - 3. Respondent to STAY AWAY from PETITIONER'S CHILD and CHILD'S SCHOOL.
 - 4. Respondent to have NO TELEPHONE OR EMAIL CONTACT with Petitioner.
 - 5. Respondent to REFRAIN FROM THIRD PARTY CONTACT.
 - 6. Respondent to refrain from menacing, harassing and/or assaulting Petitioner or committing any family offense against her.
 - 7. Temporary Child Support in the amount of \$150 per week.
- (c) And for such other and further relief as to the Court seems just and proper.

Dated: **October**____, 2019

Petitioner, Lynn Ann

G. DOMESTIC VIOLENCE PEDIGREE SHEET

Petitioner & Case Information:

Docket Number: Click or tap here to enter text. Date: Click or tap to enter a date. County: Choose an item.

Petitioner's Name: Click or tap here to enter text. Telephone number: Click or tap here to enter text.

Description of Respondent:

(If you have a recent photograph please attach)

Respondent Name: Click or tap here to enter text. Telephone Number: Click or tap here to enter text.

Alias: Click or tap here to enter text.

Social Security Number: Click or tap here to enter text.

text.

Gender: Choose an item.

Age: Click or tap here to enter text.

Date of Birth: Click or tap here to enter text.

Height: Click or tap here to enter text.

Weight: Click or tap here to enter text.

Race: Click or tap here to enter text.

Hair Color: Click or tap here to enter text.

Eye Color: Click or tap here to enter text.

Body Type: Choose an item.

Skin Complexion: Choose an item.

Respondent Information

1. Other identifying features: Choose an item.
 - a. Please describe any identifying features checked: Click or tap here to enter text.
2. Respondent's Address include apartment number and floor: Click or tap here to enter text.
3. If respondent stays with friends or relatives, addresses including apartment or floor: Choose an item.
4. If Respondent works or attends school what is the address: Choose an item.
 - a. What days of the week are they at school or work: Choose an item.
 - b. What hours are they at school or work: Click or tap here to enter text.
5. Has the respondent ever been arrested for any crimes, including fare evasion in the subways transit system? Choose an item.
 - a. If yes, when and where were they arrested? Click or tap here to enter text.
6. Does the respondent carry or have access to weapons (gun, knife, box cutter)? Choose an item.
7. Does the respondent have any other cases pending in Criminal, Family or Civil Court? Choose an item.
 - a. If yes, please explain: Click or tap here to enter text.

H. SAMPLE REMOTE TEMPORARY ORDER OF PROTECTION

F.C.A. §§ 430, 550, 655, 828, 1029

GF5 12/2013

ORI No: [REDACTED]
Order No: [REDACTED]
NYSID No: [REDACTED]

At a term of the Family Court of the State of New York,
held in and for the County of New York, at 60 Lafayette Street, New
York, NY 10013, on April 01, 2020

PRESENT: Honorable Ilana Gruebel

In the Matter of a FAMILY OFFENSE Proceeding

[REDACTED] (DOB: [REDACTED]),
Petitioner

- against -

[REDACTED] (DOB: [REDACTED]),
Respondent

File # [REDACTED]
Docket # [REDACTED]
Temporary Order of Protection

Ex Parte

NOTICE: YOUR FAILURE TO OBEY THIS ORDER MAY SUBJECT YOU TO MANDATORY ARREST AND CRIMINAL PROSECUTION, WHICH MAY RESULT IN YOUR INCARCERATION FOR UP TO SEVEN YEARS FOR CRIMINAL CONTEMPT, AND/OR MAY SUBJECT YOU TO FAMILY COURT PROSECUTION AND INCARCERATION FOR UP TO SIX MONTHS FOR CONTEMPT OF COURT. IF YOU FAIL TO APPEAR IN COURT WHEN YOU ARE REQUIRED TO DO SO, THIS ORDER MAY BE EXTENDED IN YOUR ABSENCE AND THEN CONTINUES IN EFFECT UNTIL A NEW DATE SET BY THE COURT.

THIS ORDER OF PROTECTION WILL REMAIN IN EFFECT EVEN IF THE PROTECTED PARTY HAS, OR CONSENTS TO HAVE, CONTACT OR COMMUNICATION WITH THE PARTY AGAINST WHOM THE ORDER IS ISSUED. THIS ORDER OF PROTECTION CAN ONLY BE MODIFIED OR TERMINATED BY THE COURT. THE PROTECTED PARTY CANNOT BE HELD TO VIOLATE THIS ORDER NOR BE ARRESTED FOR VIOLATING THIS ORDER.

A petition under Article 8 of the Family Court Act, having been filed on April 01, 2020 in this Court and good cause having been shown, and [REDACTED] having been not present in Court.

NOW, THEREFORE, IT IS HEREBY ORDERED that [REDACTED] (DOB: [REDACTED]) observe the following conditions of behavior:

[01] Stay away from:

[A] [REDACTED] (DOB: [REDACTED]);

[B] the home of [REDACTED] (DOB: [REDACTED]);

[E] the place of employment of [REDACTED] (DOB: [REDACTED]);

[14] Refrain from communication or any other contact by mail, telephone, e-mail, voice-mail or other electronic or any other means with [REDACTED] (DOB: [REDACTED]) no third party contact; no electronic communication;

[02] Refrain from assault, stalking, harassment, aggravated harassment, menacing, reckless endangerment, strangulation, criminal obstruction of breathing or circulation, disorderly conduct, criminal mischief, sexual abuse, sexual misconduct, forcible touching, intimidation, threats, identity theft, grand larceny, coercion or any criminal offense against [REDACTED] (DOB: [REDACTED]);

[12] Surrender any and all handguns, pistols, revolvers, rifles, shotguns and other firearms owned or possessed, including, but not limited to, the following: any and all firearms owned or possessed and do not obtain any further guns or other firearms. Such surrender shall take place immediately, but in no event later than immediately at the nearest NYPD precinct;

It is further ordered that this temporary order of protection shall remain in force until and including June 10, 2020, but if you fail to appear in court on this date, the order may be extended and continue in effect until a new date set by the Court.

Dated: April 01, 2020

ENTER


HONORABLE ILANA GRUEBEL
JUDGE OF THE COURT OF CLERKS OF THE DISTRICT OF COLUMBIA

Next Appearance Date: 06/10/2020 at 09:00 AM - Honorable TBD Judge, Part NYC-CVO

PURSUANT TO SECTION 1113 OF THE FAMILY COURT ACT, AN APPEAL FROM THIS ORDER MUST BE TAKEN WITHIN 30 DAYS OF RECEIPT OF THE ORDER BY APPELLANT IN COURT, 35 DAYS FROM THE DATE OF MAILING OF THE ORDER TO APPELLANT BY THE CLERK OF COURT, OR 30 DAYS AFTER SERVICE BY A PARTY OR THE ATTORNEY FOR THE CHILD UPON THE APPELLANT, WHICHEVER IS EARLIEST.

The Family Court Act provides that presentation of a copy of this order of protection to any police officer or peace officer acting pursuant to his or her special duties authorizes, and sometimes requires such officer to arrest a person who is alleged to have violated its terms and to bring him or her before the court to face penalties authorized by law.

Federal law requires that this order is effective outside, as well as inside, New York State. It must be honored and enforced by state and tribal courts, including courts of a state, the District of Columbia, a commonwealth, territory or possession of the United States, if the person restrained by the order is an intimate partner of the protected party and has or will be afforded reasonable notice and opportunity to be heard in accordance with state law sufficient to protect due process rights (18 U.S.C §§ 2265, 2266).

It is a federal crime to:

- cross state lines to violate this order or to stalk, harass or commit domestic violence against an intimate partner or family member;
- buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition while this Order remains in effect (Note: there is a limited exception for military or law enforcement officers but only while they are on duty) ; and
- buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition after a conviction of a domestic violence-related crime involving the use or attempted use of physical force or a deadly weapon against an intimate partner or family member, even after this Order has expired (18 U.S.C. §§ 922(g)(8), 922(g)(9), 2261, 2261A, 2262).

Check Applicable Box(es):

- ☐ Party against whom order was issued was advised in Court of issuance and contents of Order
- ☐ Order personally served in Court upon party against whom order was issued
- ☒ Service directed by Police Service
- ☐ [Modifications or extensions only]: Order mailed on [specify date and to whom mailed]:
- ☐ Warrant issued for party against whom order was issued [specify date]:
- ☒ ADDITIONAL SERVICE INFORMATION [specify]: Other: Sheriff to Serve; and/or text or e-mail service authorized; For text and email service petitioner counsel to provide proof

I. HOW TO CONDUCT A CAP INTERVIEW

There will be several points throughout your work with CAP when you interview your assigned petitioner. The following is a guide to how to conduct these interviews. However, it is impossible to tell you in advance exactly when to ask which questions and when to give what information. You will have to use your judgment to mold the interviewing to time constraints and the logistics of the day. In addition, while this section discusses information to convey and elicit, it does not address issues of sensitivity toward domestic violence victims. See “Interviewing Domestic Violence Victims” in the Appendix for more information.

Introduce Yourself & Explain the Purpose of the Interview

CAP advocates should introduce themselves with something like this:

“My name is X. I am a law student, not an attorney, and I do not work for the court. I have been trained to assist people who are filing for Orders of Protection against intimate partners. My role is to help you file for the petition and follow up with you to assist having your order of protection served and preparing you for your next court date. Do you have any questions about my role?”

Suggested Interview Outline

1. Briefly explain where the petitioner is in the Family Court process. For example:

“I understand that you are here to get an Order of Protection against your_____. The petition is a legal document that is the basis of your case. The petition is the only document the judge will see when you file. I will be gathering this information from you and preparing your petition with you.

It is very important for the petition to include significant incidents that have occurred, including acts of violence, threats of violence and harassment, and that it be very specific. You should feel comfortable with everything that is included in the petition. Also, you should know that the respondent will see the petition, so if there is anything you do not want him/her to see, you can leave that out.

Later today, you will speak with a judge over the phone (OR over video). The judge will see your petition and will ask you some questions to determine whether you should get a Temporary Order of Protection. You will have to come back to court very likely several times, to get a final Order of Protection (through a trial OR on agreement if the respondent consents). The Temporary Order will expire on the next court date but will normally be extended again throughout the case. The Final Order may be for a duration of 2-5 years depending on the facts of your case.” (See below for more on the court process.)

2. Explain the purpose of the interview. For example:

“Your Order of Protection case will be based on the information that we include in the petition. Even though it may be difficult to re-tell what happened to you, it is really important that we include information about all of the incidents that have happened. That’s why I will likely need to ask you

questions that can feel private, personal, or invasive.”

3. Note-taking.

CAP advocates should take detailed notes throughout the interview to enable them to draft a detailed family offense petition. If there is a long history of domestic violence it can be helpful to have a partner on the phone taking notes while the other person leads the interview.

4. Don't forget to ask about necessary demographic information, which will be included in the body of the e-mail used to file the final petition with the Court.

The clerk will use this information to open up the case. It is a good idea to collect the filing information at the beginning of the interview (to the extent you don't already have it in the referral form you received from Sanctuary). Here's what you will need to send to the court:

- | | |
|--|---|
| ▪ Petitioner's name | ▪ Respondent's name |
| ▪ Petitioner's current address | ▪ Respondent's current address |
| ▪ Whether Petitioner wants the address to remain confidential | ▪ Respondent's last known address and/or work address if the petitioner does not know his/her current address |
| ▪ Whether Petitioner needs an interpreter | ▪ Respondent's DOB |
| ▪ Petitioner's phone number | ▪ Respondent's phone number |
| ▪ Petitioner's e-mail | ▪ Respondent's physical characteristics, including height, weight, race, eye color, hair color, and any distinguishing marks (tattoos, scars, etc.) ¹⁴ |
| ▪ Petitioner's DOB | |
| ▪ Petitioner's children's names and DOB's, and information about whether the children live or do not live with Petitioner. | |

5. **Inquire about the history of violence and help the petitioner outline the incidents they will include in their petitions.** A guideline for good petitions is for them to include incidents in reverse chronological order. As a guideline, petitions should include at least the most recent incident, the most serious incident, and the first incident. In partnership with the petitioner, you will decide which other incidents to include. For example, if there is a range of types of abuse, such as strangling, punching, and locking petitioners in the house against their will, they can include a “catch-all” sentence that includes all of these offenses. The following section includes some helpful pointers about the type of information you need to gather about the abuse history. (See Preparing Family Offense Petitions section).
6. **Explain the significance of aggravating circumstances** and inquire about them. Explain that if the petitioner can prove at trial that there were aggravating circumstances present, the court might award a five-year Order of Protection instead of a two-year Order. (Aggravating circumstances are discussed elsewhere in the Manual)
7. **Listen for the lethality factor “red flags.”** These are patterns of abusive behaviors that are dangerous and increase the risk of homicide. Risk factors include: recent separation (within 6

¹⁴ The court will send these characteristics to the sheriff's office for purposes of effecting service of process.

months), an unemployed or otherwise isolated abuser, abuse to pets/animals, use of a weapon/gun, threats of suicide together with homicide (I'm going to kill you and then myself), drug or alcohol abuse by the abuser, fire setting, specific threats, strangulation an abuse while the victim is pregnant. If the petitioner discloses any of these red flags that were not already known when you received the referral, tell your CAP Supervisor.

8. **Explain the relief available.** Ask the petitioner what kinds of relief they are seeking. Prepare the petition so that it specifically requests that relief, i.e. stay-away order, exclusionary order, including the petitioner's children on the order, etc. Remind the petitioner to point these out to the judge when they are in the virtual appearance.
9. **Explain the Family Court process.** The CAP advocate should make sure the petitioner understands the process of getting an Order of Protection and what will happen next in the petitioner's case. The next section includes information about the family court process.

Practice Tips for Inquiring About the History of Violence

This section provides some tips on the type of details you should gather from your petitioner. Note that gathering details about the history of abuse can be a difficult process for your CAP petitioner and you should approach your questions in a trauma-informed way. Please review "Interviewing Domestic Violence Victims" in the Appendix for more information on how to conduct a trauma-informed interview.

It can sometimes be a balancing act to determine how much detail regarding the abuse to include in the petition. You want just enough detail to sufficiently make out a family offense(s) and establish things like pain, physical injury, and/or aggravating circumstances. It's often helpful to review the statutory language of the potentially relevant family offenses before you start the interview, so you have an idea of what is and is not relevant. Every case will be different, and the balancing act will get easier with every petition you draft, but here are some examples of typical questions you might ask to elicit relevant details for your petition.

- If there are physical incidents, you want to focus on details about the physical acts themselves, as well as whether the physical acts resulted in pain or injury.
 - Ask about the approximate date of the incident as well as the approximate time—if it occurred late at night that might be something you want to include in the petition. Ask where the incident occurred.
- If the petitioner says that the abuser "hit" them, you can ask:
 - Where on your body did they hit you? On your face? On your arm? Do you remember which arm?
 - How did they hit you? Was it a closed fist like a punch? Or was it an open palm like a slap?
 - Ask about pain and injury: Was it painful? About how long did the pain last? Did it leave a red mark? A bruise?

- DO NOT ask why the abuser hit them – it’s not relevant and is victim blaming.
- If the petitioner says that the abuser “pushed” them, you can ask:
 - How did they push you? Did they use two hands or one? What kind of force did they use?
 - What happened right after they pushed you? Did the push cause you to fall to the ground or fall into anything? How hard did you hit the ground? Did you hit your head when you fell?
 - Ask about pain and injury: Was it painful when they pushed you? When you hit the ground? About how long did the pain last? Did it leave any bruising?
 - DO NOT ask why the abuser pushed them – it’s not relevant and is victim blaming.
- Find out what else the abuser was doing while they were engaging in the physical acts of abuse. Often they are also yelling, cursing, and/or calling the petitioner demeaning names. You can ask things like:
 - Was the abuser saying anything to you while they were doing these things? What kinds of things were they saying? Were they calling you any names? Can you remember some of the names?
 - What was their demeanor like while was saying these things? Were they angry? Yelling?
- If the petitioner wants the children on the Order, find out what the children were doing while the incident(s) was/were happening.
 - Where were the children while this was happening? In the home? In the same room?
 - Did they see the abuse? Did they hear the yelling?
 - What were they doing? Hiding? Crying?
- Asking the above questions will allow you to draft something like this for your petition:

On or about April 2, 2020, in the evening, Respondent entered Petitioner’s bedroom and began yelling at her, calling her demeaning names such as “bitch” and “slut.” Respondent punched Petitioner’s chest with a closed fist, causing pain, as well as bruising that lasted for approximately 5 days. Petitioner attempted to get out of bed, but Respondent used both his hands to shove her forcefully back onto the bed, causing Petitioner to hit her head on the headboard and experience a sharp pain in the back of her head. Petitioner’s five-month-old child was sleeping in the crib in Petitioner’s bedroom and at some point during the incident awoke and began crying. As a result of Respondent’s behavior, Petitioner fears for her safety and the safety of her child and suffered annoyance and alarm.

If your petitioner can’t remember dates, use memory cues:

- | | |
|--|--|
| ✓ Weather – was it hot/cold outside? | ✓ Children’s ages/when petitioner’s children were born |
| ✓ Holidays | ✓ Photographs or text messages |
| ✓ Pregnancy/other important life events | ✓ Social media posts |
| ✓ What the petitioner was wearing (may indicate seasons/weather) | ✓ Ask friends/family (if safe/comfortable) for rough dates |

- If there has been tech-facilitated stalking/harassment, you should focus on the frequency and type of communications, as well as whether the communications contained anything that can be construed as a threat. Be careful not to overstate the frequency. Petitioners often feel like their abuser is contacting them “constantly” or “hundreds of times” but you need to make sure you really understand the level of frequency.
 - If the petitioner says that the abuser “won’t leave me alone,” “calls and texts me constantly,” “sends hundreds of messages” →
 - Ask about the modes of communication. Is it phone, text, email, WhatsApp, social media? What kind of social media - Facebook, Instagram, TikTok?
 - Get details about the communications for the last two weeks or so. About how many texts/messages this past week? Calls? If you pick up, what does the abuser say? Leave any voicemails? What do they say? What’s the typical content of the messages? Any threats? Any suicidal ideations? Any messages that stood out to you as particularly scary? Why? Do you typically get the calls or texts at a particular time of day?
 - After you get the details from the last couple of weeks, find out how long this has been going on. Has it been this way for the last couple of months? Has it increased recently?
 - Establish when the petitioner told the abuser to stop contacting them and whether they told the abuser repeatedly to stop contacting them. Did you tell them to stop contacting you? Do you remember about when you did that? Have you told them more than once?
- Where there is technology-facilitated abuse, there may also be cyber sexual abuse. However, some petitioners may feel too embarrassed to bring it up, and a lot of petitioners do not realize that the threat to disseminate an intimate image/video is a crime.
 - If your petitioner has not mentioned cyber sexual abuse, you can raise it yourself by saying something like “I’m not sure if you know this because it’s a new crime, but if someone sends, or threatens to send, an intimate image or video of you that it is a crime. I just want to make sure that nothing like that happened here. If it did, I think it’s important we put it into the petition so we can ask the judge to prevent the abuser from doing that again.
 - If you establish cyber sexual abuse you can ask questions similar to the ones above to establish the modes of communication and frequency.
 - You do not need to get details about the actual image/video beyond ascertaining that it depicts the petitioner in a naked or semi-naked state and/or engaging in a sexual act.
- Asking the above questions will allow you to draft something like this for your petition:
 - *On or about April 3, 2020, Respondent emailed Petitioner approximately 7 times and called Petitioner multiple times between approximately 1AM and 5AM despite Petitioner previously telling Respondent multiple times not to contact her. Respondent left Petitioner approximately 5 voicemails, stating in sum and substance that he wanted Petitioner back “or else she’d be in trouble”, which Petitioner took to be a threat. As a result of Respondent’s behavior, Petitioner fears for her safety and suffered annoyance and alarm.*

- *On or about April 2, 2020, Respondent called Petitioner approximately 11 times and left approximately 3 voicemails, despite Petitioner previously telling Respondent multiple times not to contact her. Two of those voicemails threatened, in sum and substance, that Respondent was going to send naked images of Petitioner to all of Petitioner's co-workers and family. As a result of Respondent's behavior, Petitioner fears for her safety and suffered annoyance and alarm.*

Talking to Petitioners About the Family Court Process

- **Make sure the petitioner understands that to get an Order of Protection they must first file a petition, which is a legal document setting out the incidents of abuse and requesting appropriate relief.** Explain that you need to interview them to gather details about the incidents of abuse, but they will decide what to put in their petitions—if they aren't comfortable with something you can leave it out of the petition. But they should understand that it is important that petitions allege as many of the major incidents of abuse that petitioners are comfortable including because they cannot later testify about incidents of abuse that are not included on the face of the petition. It is also important to review any papers – police reports, prior orders of protections, hospital records – the petitioners have forwarded to you to make sure that the dates and descriptions alleged in the family offense petition are consistent.
- **Explain that the abuser/respondent will see the petition because they will be served with the papers.** It is important that the petitioner is aware of this in the beginning, so that they can decide which incidents to include in the petition. For example, victims often do not want to report sexual abuse.
- **Remind the petitioners that the petition is a legal document and that they are swearing to its truth.** They should read their petition carefully and they should be sure that everything included in the petition is true and that there are no major omissions before they sign it. If any important information is left out, the petitioner can ask their CAP advocate to add the information to the petition before they sign it.
- **Inform the petitioner that their address can remain confidential IF the respondent does not know where they live.** The petitioner may include in the family offense petition that they do not want their addresses to appear on the petition or any court documents. The Family Court Act §154-b specifically authorizes the court to permit the petitioner to keep their address confidential from an adverse party in any pleadings where the court finds that disclosure of the address “substantially increases the risk of violence.” A petitioner cannot ask for their address to be confidential if the respondent already knows where they live.
- **Inform the petitioner that they will have a virtual appearance** (phone call or video appearance¹⁵) before a judge the same day the petition is filed. After the petitioner files, they must be available for the next several hours to take a call from the court. They may receive a call very quickly, or they may have to wait a couple of hours; it really depends on how busy the court

¹⁵ Most of these appearances are by phone; however, it is possible the petitioner will likely be given a link for a video appearance.

is that day.

- The judge will read the petition, and the judge might ask the petitioner a few questions about what is stated in the petition. For example, the judge may ask: “Is everything you said in the petition true? Is this how it happened?”
 - The judge may also ask specific questions about alleged incidents. Remind the petitioner to stick to describing the incidents of abuse in the same way they are described in the petition and not provide extraneous information unless asked.
 - Remind the petitioner to listen to the judge for what relief, if any, is being issued, and be prepared to advocate for any specific relief that the judge did not mention. For example, if the petitioner is requesting an Order of Protection for themselves and their children, the petitioner should be listening closely to the judge to make sure that their children are also included on the Order of Protection. If they do not hear the judge mention the children, they should be prepared to respectfully advocate for that specific relief. They should also be sure to take notes during the appearance. See Prepping Petitioner For The Virtual First Appearance for more.
- **The judge will then decide whether to give the Petitioner a Temporary Order of Protection (TOP).** The TOP is only in effect until the next court date, so if the petitioner does not return to court, the TOP will no longer be valid and they will no longer have legal protection from the Family Court against their abuser. TOPs are typically extended and expire from court date to court date until the case is ultimately resolved. If the case concludes with the judge issuing a “final” Order of Protection, this order is NOT permanent; it will last 2-5 years.
 - **Explain that the TOP is only enforceable once it has been served on the respondent.** Explain the rules of service of process (see Understanding Family Offenses and Order of Protection Proceedings, for more on service).
 - **Inform the Petitioner that they may need to testify about the incidents of violence if the case goes to trial.** They should collect any evidence that supports their claim, like hospital records, photographs of their injuries, clothing that has been ripped, screen shots of harassing messages, etc. Evidence also includes testimony from witnesses to any incidents.
 - **Discuss with the petitioners how they should dress on the adjourned date (if it is not by telephone) and how they should speak when they appear before the judge.** The petitioner should dress professionally and should not wear jeans or sneakers to court. The petitioners should not interrupt the judge when they are speaking. The petitioner can respectfully inform the judge when they do not understand something and ask the judge to explain.
 - **Explain that the respondent may be there on the adjourn date** if they are served with the court papers and discuss the option of having the petitioner wait in the Safe Horizon office to avoid contact with the respondent (if the adjourned date will be in person).
 - **Explain that the Family Court process is unpredictable,** and they will most likely have to come back to court several times before this case is resolved.

- **Inform the petitioners that they have a right to request a court appointed attorney** (also known as an “18-B”) if their income is low (the income cut-off depends on the number of dependents but can be up to \$40K or so). The judge or the judge’s court attorney should ask them in court on the first appearance or on the adjourned date if they would like an attorney and will likely ask about their income level. *If they are not asked, the petitioner should request that the court appoint an attorney.* If the petitioner is not assigned counsel, your CAP Supervisors will help you to determine whether the petitioner is eligible for referral to an attorney through CAP. Petitioners are also encouraged to go to their local Family Justice Center to seek counsel (Family Justice Centers described elsewhere in CAP Manual).

Discuss the Petitioner’s Decision to Pursue a Family Court Case

At some point in the process, it might be appropriate to help the petitioner assess whether pursuing their case in Family Court is the wisest course of action for them to take. Many petitioners file petitions in Family Court because someone – a police officer, a friend, a counselor, etc. – told them to, but they are unaware of their options or the possible ramifications of pursuing their case.

There are many reasons that pursuing a case in Family Court may not be in their best interests. They may be better off filing criminal charges or doing nothing in court at all. These reasons may be because of their own situations or because of the nature of Family Court or a combination of the two. Some factors to consider are listed below. While none of these factors is dispositive, they are important to keep in mind as you learn more about the petitioner’s lives and their situations. Remember, your role is not to convince the petitioner to pursue their case or not to pursue their case. Your role is to educate them about the possible repercussions of their actions so that they can make decisions wisely. You should discuss these situations with your CAP Supervisor.

Factors Relating to Family Court:

1. **Family Court gives the respondent the opportunity to see the petitioner (virtually or in person) and get access to them.** The petitioner cannot get a Final OP without first having the respondent served, and, in most cases (in non-pandemic times), seeing the respondent in Family Court. When the respondent is served, they may become angry and attempt to find the petitioner. Seeing the respondents in court may be traumatic for the petitioner. The court may also inadvertently give the respondent access to information about the petitioner, such as their address or simply the borough in which they are living. Even if precautions are taken, the respondent may try to follow the petitioner home or simply frighten them or undermine their confidence. Especially for a petitioner who is in shelter and is therefore hidden from the respondent and living in a safe place, the ramifications of seeing the respondent may be worse for them than not having an Order of Protection.
2. **Family Court gives the respondent the opportunity to use the legal system against the petitioner.** Abusers often use the legal system to continue their abuse, especially if they have lost direct control over the victim because the relationship has been terminated. Once the respondent is in Family Court, they may decide to file a cross-OP against the petitioner or file for custody or visitation. Then the petitioner has become a respondent in that case and cannot simply drop their own case.
3. **The petitioner can become embroiled in ongoing Family Court proceedings.** Once the

petitioner has come to Family Court and appeared before the judge (in non-pandemic times), many things can force them to keep coming back – for months and even years. For example, if the respondent files for custody, the petitioner is required to appear in that case for every return date. If the petitioner fails to appear, the court can issue a default judgment against the petitioner.

4. **Once the petitioner informs the court of violence involving the children, they can lose control of the case, even though the case is based on their petition.** It is very important that the petitioner understands that the court has an obligation to protect children from abuse. Therefore, if the petitioner alleges incidents concerning the children's safety, they are essentially alerting the state to these facts. On the basis of their allegations, the judge can order a court ordered investigation (COI) of them, their home and/or the respondents and their home by the Administration for Children's Services (ACS).

Discussing Whether the Petition Should Include Incidents Relating to the Children

Victims of domestic violence face an unfortunate catch-22 when deciding what to include in their petition with respect to children. If the allegations are very serious and there are children in the home who were there when incidents occurred, the Family Court may decide to order an investigation by ACS. ACS is supposed to focus its attention on the abuser's accountability and on offering help to the petitioner. However, untrained ACS caseworkers may instead blame the petitioner for the violence in the home and threaten to remove their children if, for example, the petitioner does not go into a shelter, file for an Order of Protection, or take other steps. ACS is prohibited from removing the children of abused petitioners solely or primarily because there has been domestic violence in the home¹⁶; however, once involved with the family, ACS may develop a pretext for intervention and removal of the children to avoid the prohibition.

If the petitioner is committed to following through with the petition for an order of protection (e.g., until a final order of protection is issued), wants to or is attending counseling, and otherwise is taking steps that are perceived to be proactive in protecting the children, an ACS investigation may be nothing more than a benign annoyance to the petitioner. Your role is to be aware of the possible ramifications of emphasizing danger to the children and to explain to the petitioner the possible ramifications of including allegations about the children in the petition. If you suspect these issues may be a problem for your petitioner, or if an ACS investigation is initiated as a result of the filing of the petition, seek guidance from your CAP Supervisor.

Other Things to Think About When Talking to Petitioner

1. **How violent is the abuser? What are the possible repercussions to the Petitioner once the abuser is served?** Once respondents are served, they are likely to be angry that the petitioners filed petitions against them and exposed their private lives to the outside world. This may even be the first time the petitioners have gone to seek assistance and protection. Has the abuser

¹⁶Nicholson v. Williams, 203 F.Supp.2d 153 (E.D.N.Y. 2002); Nicholson v. Scoppetta, 344 F.3d 154 (C.A.2 (N.Y.) 2003); Nicholson v. Scoppetta, 3 N.Y.3d 357, 820 N.E.2d 840 (N.Y. 2004).

threatened to kill the petitioner or others if the petitioner goes to court? Does the petitioner think the abuser will try? Is the petitioner interested in going into shelter before the respondent is served?

2. **Has the Respondent threatened to file for custody of the children?** Has the respondent used the system against the petitioner before? Does the petitioner think the respondent really wants to file for custody? If the respondent files for custody or visitation, the petitioner will be required to return to court many times, thus forcing the petitioner to see the abuser on a regular basis and increasing the abuser's chances of finding the petitioner's location, however confidential.
3. **Does the abuser know where the Petitioner is? Is the Petitioner in shelter?** If the petitioner is in hiding, coming to court may very well jeopardize their safety.
4. **How vulnerable is the Petitioner emotionally?** How will it affect the Petitioner to see the abuser?
5. **Will seeing the respondent put the petitioner in danger?**
6. **Does the petitioner work full-time?** Will repeated returns to court jeopardize employment?

The referring attorney will have covered many of these things already with your client, but if any of the above continue to be concerns for your client let your CAP Supervisor know.

Explain that Petitioners May Also File Criminal Charges against Their Abusers

There are pros and cons to being in the criminal justice system as well as the Family Court system. First, in Criminal Court, the state prosecutes the case against the abuser, who is a defendant, and the victim is the complaining witness. It is the Assistant District Attorney's job to bring the case forward, and the victim need not appear in court for each court appearance. In family court, the victim is a "petitioner," bringing a civil action against the "respondent." This means that in order for the petitioner's case to proceed in Family Court, they must appear at each court date. Because the victim must appear for all Family Court appearances, the abuser's access to the petitioner is significantly higher in Family Court. Additionally, in Family Court, the victim is a party to the case and may drop the case at their own discretion, whereas in criminal court the victim is a complaining witness and has no direct control over how the case proceeds.

Second, there is a higher standard of proof in Criminal Court than in Family Court—beyond a reasonable doubt as opposed to by a preponderance of the evidence.

Third, if the victim files a criminal complaint, the abuser could be arrested immediately and might ultimately serve time. Once the abuser is arrested the victim will receive a temporary criminal order of protection. The abuser will not be arrested in a Family Court action (save exceptional circumstances mostly not relevant to CAP petitioners). Safety issues such as how the abuser will react to being arrested may weigh heavily against pursuing a criminal case. See Understanding Family Offenses and Order of Protection Proceedings for more information on the differences between Criminal Court and Family Court.

J. DRAFTING THE FAMILY OFFENSE PETITION USING THE TEMPLATE

The referral email you receive from Sanctuary will include an attachment called the Family Offense Petition Template. Please use this document to draft your family offense petition. We have taken screenshots of various sections of the template and have included comments below each section to give you a step-by-step look at how to draft using the template. Areas in the template that have been highlighted are areas where you will need to input content related to your Petitioner !

F.C.A. 812, 818, 821 Form 8-2
(Family Offense Petition)

FAMILY COURT: STATE OF NEW YORK
COUNTY OF *Insert County*

-----X
X (DOB ??/??/????) File No.:
Docket No.:

Petitioner,

-against-

Y (DOB ??/??/????) **FAMILY
OFFENSE PETITION**

Respondent.
 -----X

TO THE FAMILY COURT:

The undersigned Petitioner, respectfully shows that:

1. Petitioner, **X**, resides at **X location** OR a confidential address.
2. Respondent, **Y**, resides at **Y location** OR unknown address.
3. (Upon information and belief), the Respondent **who is married to/who has a child in common with/who is in an intimate relationship with** the Petitioner committed an act or acts, which constitute: **LEAVE ALL OF THE FOLLOWING OPTIONS IN** (disorderly conduct) (aggravated harassment in the second degree) (harassment in the first degree) (harassment in the second degree) (menacing in the second degree) (menacing in the third degree) (reckless endangerment) (assault in the second degree) (assault in the third degree) (attempted assault) (stalking in the first degree) (stalking in the second degree) (stalking in the third degree) (stalking in the fourth degree) (criminal mischief) (sexual misconduct) (forcible touching) (sexual abuse in the third degree) (sexual abuse in the second degree) (criminal obstruction of breathing or blood circulation) (strangulation in the second degree) (strangulation in the first degree) (identity theft in the third degree) (identity theft in the second degree) (identity theft in the first degree) (grand larceny in the fourth degree) (grand larceny in the third degree) (coercion in the second degree) (coercion in the third degree) (unlawful dissemination or publication of an intimate image) toward Petitioner, in that:

Caption: The “caption” refers to the top portion of the document, which contains case identifying information.

- **Insert County:** Here you should insert the **venue** county, i.e. the county that the Petitioner lives in, the county that the abuser lives in, or the county that the abuse took place in.
 - For Manhattan, put **New York**;
 - For Brooklyn, put **Kings**;
 - For Queens, put **Queens**;
 - For Bronx, put **Bronx**; and
 - For Staten Island, put **Richmond**.

- **X (DOB ??/??/????).** In this line, **put the Petitioner’s name and their date of birth.**
- **Y (DOB ??/??/????).** In this line, **put the Respondent’s name and their date of birth.**

#1 – Petitioner’s Name & Address:

- **“X.”** Enter Petitioner’s name.
- **“X location” or “a confidential address.”**
 - If the Respondent *does not* know where the Petitioner lives and the Petitioner would like to keep this information secret, you can keep **“a confidential address”** and delete **“X location.”**
 - If the Respondent knows the Petitioner’s address, delete the reference to a confidential address and enter the Petitioner’s address where it indicates **“X location.”**

#2 – Respondent’s Name & Address:

- **“Y.”** Enter Respondent’s name.
- **“Y location” or an unknown address.”**
 - If the Petitioner knows the Respondent’s address (or the address where the Respondent is residing at the time of the writing), enter it where it indicates **“Y location”** and delete any reference to **an unknown address.**
 - If the Petitioner *does not* know the Respondent’s address, keep the reference to **unknown address** and delete where it says **“Y location.”** *** If the Petitioner does not know where the Respondent is residing, they may not be able to ask for service by the Sheriff. Instead they would need to request that the Respondent be served via personal service. (Page 19).*

#3 – Parties’ Relationship & List of Family Offenses:

- **Parties Relationship:** Choose **one** of the relationship options, highlighted, and delete the others.
- **“Leave All Of the Following Options In.”** Delete the words “leave all of the following options in,” highlighted in yellow. **Do NOT delete any of the family offenses from the block.** The CAP Supervisor reviewing your draft will edit out any family offenses that should not be included.

#4 – Incident Paragraphs: Goes right underneath the list of family offenses!

- Your incident paragraphs should be in an (a), (b), (c) list format. Each incident should be a separate paragraph.
- Paragraph (a) should be the **most recent incident.**

3. (Upon information and belief), the Respondent who is married to/who has a child in common with/who is in an intimate relationship with the Petitioner committed an act or acts, which constitute: **LEAVE ALL OF THE FOLLOWING OPTIONS IN** (disorderly conduct) (aggravated harassment in the second degree) (harassment in the first degree) (harassment in the second degree) (menacing in the second degree) (menacing in the third degree) (reckless endangerment) (assault in the second degree) (assault in the third degree) (attempted assault) (stalking in the first degree) (stalking in the second degree) (stalking in the third degree) (stalking in the fourth degree) (criminal mischief) (sexual misconduct) (forcible touching) (sexual abuse in the third degree) (sexual abuse in the second degree) (criminal obstruction of breathing or blood circulation) (strangulation in the second degree) (strangulation in the first degree) (identity theft in the third degree) (identity theft in the second degree) (identity theft in the first degree) (grand larceny in the fourth degree) (grand larceny in the third degree) (coercion in the second degree) (coercion in the third degree) (unlawful dissemination or publication of an intimate image) toward Petitioner, in that:

(Delete italic text from final draft)

In reverse chronological order:

(a) *Most Recent Incident (Begin all paragraphs with: "On or about X date, at this location, Respondent...")*

(b) *Worst Incident that is relatively recent (try to keep incidents relatively recent in time – 2019, 2018, 2017, 2016).*

(c) *Another serious incident relatively recently in time.*

(d) *Catch-all paragraph (when the first incident took place and general description of the historical nature of the domestic violence)*

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- Continue to list the incident paragraphs **in reverse chronological order**.
- Incidents should **not** be written in italics.
- **Catch-All Paragraph.** The last paragraph in the list can be a *catch-all* paragraph, used to include other family offenses that the Respondent has committed during the course of the parties' relationship. In this paragraph we usually include incidents of abuse that the Petitioner does not have a specific enough date for. The paragraph often starts off with, "The parties have been together for X number of years. Throughout the parties' relationship OR during the course of the parties' relationship, Respondent engaged in a pattern of physical, emotional, and verbal abuse" (**include all that apply and remove others**).

(d) *Catch-all paragraph (when the first incident took place and general description of the historical nature of the domestic violence)*

4. The following are the names and ages and relationships to the petitioner and respondent of each and every child in the household:

Name	Date of Birth	Relationship to Petitioner/Respondent

5. The following aggravating circumstances, if any, are present in this case [Aggravating circumstances shall mean physical injury or serious physical injury to the petitioner caused by the respondent, the use of a dangerous instrument against petitioner by the respondent, a history of repeated violations of orders of protection by the respondent, prior convictions for crimes against the petitioner by the respondent or the exposure of any family or household member to physical injury by the respondent and like incidents, behavior and occurrences which constitute an immediate and ongoing danger to the petitioner or any member of the petitioner's family or household]:

6. Upon information and belief, the following criminal, matrimonial or Family Court proceedings involving the respondent have been filed:

7. Indicate whether a previous application has been made to any court or judge for the relief requested herein and, if so, the relief, if any, granted and the date of such relief:

8. (Upon information and belief) respondent is licensed or has a license application pending to carry, possess, repair, sell or otherwise dispose of the following firearms [if known, specify type of firearms, type of license(s), date of issuance of license(s) and expiration date(s), whether license has been suspended or revoked and, if so, the date of such action and, if not currently licensed, whether license application is pending]:

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#5 – Children’s Information: If there are no children, just leave blank.

- **All** the children under the age of 18 (no children over the age of 18 should be included) who live in the Petitioner’s home (even if they have no relationship to Respondent) should be listed in this section.
- Under **Relationship to Petitioner/Respondent**, list how the child is related to the party they are related to. For example: child in common, Petitioner’s child (no relation to Respondent), Petitioner’s sibling, etc.

#6 – Aggravating Circumstances: Copy the listed circumstances that apply in your Petitioner’s case and paste them below the block of text in #5. If there are none that apply, just leave blank. For example, if in your case, the Petitioner: suffered physical injury and the parties’ children witnessed incidents of domestic violence, your petition should look like this:

5. The following aggravating circumstances, if any, are present in this case [Aggravating circumstances shall mean physical injury or serious physical injury to the petitioner caused by the respondent, the use of a dangerous instrument against petitioner by the

respondent, a history of repeated violations of orders of protection by the respondent, prior convictions for crimes against the petitioner by the respondent or the exposure of any family or household member to physical injury by the respondent and like incidents, behavior and occurrences which constitute an immediate and ongoing danger to the petitioner or any member of the petitioner's family or household]:

Physical injury or serious physical injury to the petitioner caused by the respondent;

The exposure of any family or household member to physical injury by the respondent and like incidents;

Behavior and occurrences which constitute an immediate and ongoing danger to the petitioner or any member of the petitioner's family or household.

#7 – Criminal, Matrimonial or Family Court Proceedings: If there are none, just leave blank.

- **Criminal.** If there are pending criminal cases involving the Respondent, you would list any information you have about them in this section.
 - For example:
 - The Respondent is currently being prosecuted by the Bronx County District Attorney's Office under Docket # 2020BX012345. As part of this case, an order of protection has been issued by criminal court, against Respondent, in favor of the Petitioner; OR
 - Petitioner has filed prior police reports against Respondent, including as a result of the incident described in paragraph (a) and (c), listed above
 - **PRACTICE NOTE:** The docket number of criminal cases appears in the upper left-hand corner of criminal court orders of protection. You can also check online to see if respondent has been arrested by going to: https://iapps.courts.state.ny.us/webcrim_attorney
- **Family or Matrimonial.** If there are pending family court or matrimonial cases (meaning divorce cases), involving the Respondent and Petitioner, list them in this section as well, with as much information as possible.
 - For example:
 - The Petitioner filed a custody petition, which is currently pending in Kings County Family Court, under Docket #: V-123456-20; OR
 - The Respondent filed for divorce in January 2020. This case is currently pending in Kings County Supreme Court, under Index #: 123456-20.

#7 – Previous Application: If the Petitioner has previously filed a family offense petition against Respondent, list as much information as possible here about the case, including the relief requested, the relief granted, and the date of such relief. If the Petitioner has never filed a family offense petition against the Respondent, just leave blank.

- For example:
 - On June 5, 1998, Petitioner filed a family offense petition against Respondent seeking a full stay-away order of protection. Petitioner was granted a full-stay order of protection on June 5, 1998, under Docket O-123456-98. Upon information and belief, the case was later withdrawn without prejudice.

#8 – Information about Respondent’s License to carry a Firearm: If Petitioner knows any information about whether Respondent has a license to carry a firearm, you can list in this section. If the Petitioner does not know, leave this section blank.

9. (Upon information and belief) Respondent is in possession of the following licenses and unlicensed firearms [specify number and type of firearms and whether licensed or unlicensed, if known];

10. (Upon information and belief) There is substantial risk that respondent may use or threaten to use a firearm unlawfully against petitioner (and members of petitioner’s family or household) for the following reasons:

WHEREFORE, petitioner prays

(a) ~~that~~ the respondent be adjudged to have committed the family offense(s) alleged;

(b) ~~that~~ the Court enter an order of protection, specifying conditions of behavior to be observed by the respondent in accordance with Section 842 of the Family Court Act, including the following conditions:

1. Respondent shall be EXCLUDED from Petitioner’s home.
2. Respondent shall STAY AWAY from PETITIONER, Petitioner’s HOME, and Petitioner’s WORKPLACE.
3. Respondent shall STAY AWAY from PETITIONER’S CHILD, CHILD’S SCHOOL and DAY CARE.
4. Respondent shall REFRAIN FROM COMMUNICATION OR CONTACT BY MAIL, EMAIL, TELEPHONE, VOICEMAIL, TEXT MESSAGE, ~~OR~~ ANY OTHER MEANS with Petitioner.
5. Respondent shall REFRAIN FROM THIRD PARTY CONTACT.
6. Respondent shall not interfere with the care and custody of Petitioner’s child.
7. Respondent shall refrain from menacing, harassing and/or assaulting Petitioner or committing any family offense against her.
8. That the Respondent is not to post, transmit, or maintain, or cause a third party to post, transmit, or maintain, any images, pictures, or other media, depicting the Petitioner in a naked state or participating in any sexual act OR threaten to do the same.
9. That the Respondent is to refrain from using Petitioner’s likeness or impersonating Petitioner on any social media.

(c) ~~and~~ for such other and further relief as to the Court seems just and proper.

#9 – Information about Respondent’s Possession of a Firearm: If Petitioner has knowledge that Respondent has, or has access to, a firearm, list it in this section. If the Petitioner does not know, leave this section blank.

#10 – Substantial Risk that Respondent may use or threaten to use a Firearm Against Petitioner (and/or members of Petitioner family/household): If Respondent has previously used a firearm against Petitioner (or members of Petitioner’s family) or threatened to do so, and such information was **not** included in your incident paragraphs – list it here. If it was, you can enter “See above.”

Relief: Go through the list carefully and delete all that do not apply and/or that Petitioner does not want included.

- If the parties **do not** live together, **delete condition #1** (Respondent shall be excluded from

Petitioner's home).

- If the Petitioner does not want children included on the order of protection (or the Petitioner has no children), **delete any references to children** (condition #3 and condition #6).
- If the Petitioner **does** want children included on the order of protection, **be sure to include them in condition #4 and #7.**
- If there has been no allegation of cyber sexual abuse between the parties, **delete conditions #8 and #9.**
- If the Petitioner is not seeking a temporary order of custody or order of child support for any child(ren), **delete conditions #10 and #11.**

K.

FINALIZING AND FILING THE PETITION

Finalizing the Petition

Once the petition is finalized and has been approved by the CAP Supervising Attorney, send it to the Petitioner for her/his review. Speak with the petitioner over the phone and ensure that they understand that the petition will be filed with the Court and the respondent will be served with it. After discussing the petition with the Petitioner, make any changes, per the petitioner's request/suggestion.

Once the petition is final, save the document as a .pdf. If the petitioner has access to a computer you can send the .pdf to the petitioner and they can sign the petition using the e- signature function on Adobe Acrobat.¹⁷ For many petitioners, this will be difficult, because they won't necessarily have access to a computer or may not understand the e-signature function. For those clients you can ask them to sign a piece of paper, send you an image of their signature, and affix the signature to the petition (your IT Department can help with this if you are having trouble).¹⁸

Save a copy of the signed .pdf and e-mail it back to the petitioner.

Filing the Petition

While the courts are physically closed, filing a petition simply means emailing the court (i) the signed petition and (ii) demographic information for the court to enter into the system to start the case. There are three ways you can assist a client in filing their petition:

1. Option No. 1. CAP Advocate Files For Petitioner Through EDDS (Electronic Document Delivery Service)

We have found that petitioners have had some difficulties filing on their own. As a result, the easiest and highly recommended way to file is for you to filing the petition on behalf of the petitioner with the court through EDDS.

EDDS is the New York Unified Court System's online filing system. Documents can be uploaded to the New York City courts and are typically filed same-day by a court clerk. The EDDS website can be accessed here: <https://iappscontent.courts.state.ny.us/NYSCEF/live/edds.htm>.

To begin the document submission, choose "Family Court" from the drop down list and press next. Press next again and then fill out the requested information about the sender. Example on the following page. Note that there is a space to request an interpreter if needed by Petitioner.

¹⁷ Use the "Edit" function, then chose "Fill & Sign," then "Sign," and then the petitioner can use the "Draw" tool to sign his/her name electronically.

¹⁸ Note that courts are less stringent right now about signatures so it's ok if a pasted signature doesn't looks like perfect!

In the box “Reasons for Sending Documents,” adapt the below paragraph:

Attached please find a signed pro se Family Offense Petition for pro se Petitioner [CLIENT’S NAME]. I am filing the petition on their behalf. They can be reached at (XXX) XXX-XXXX and [CLIENT’S EMAIL]. I am providing [CLIENT] pro se assistance as part of Sanctuary for Families’ Courtroom Advocates Project, in the limited capacity of filing [Client]s’ pro se Family Offense Petition. **DELETE IF NOT APPLICABLE: [Client] requires a [Language] interpreter.** I am a law student/law graduate not yet admitted to the bar and I will not be appearing with [Client] today.

On the next screen, upload the Family Offense Petition and Domestic Pedigree Sheet as PDFs. For document type, select “petition – no existing docket”. Then submit. The sender will receive a confirmation email and a second email once the document has been filed. The Petitioner should hopefully receive an email/phone call with notice of when the appearance is scheduled for, so tell them to closely monitor their inbox throughout the day. It may however go to the sender. It will come from a court email that will prompt you to make a login (if you don’t already have one) to view the attachment - the notice of appearance with timing of the hearing/the Teams link. Forward this information on to the Petitioner!

Sender's Name

First Name *

YOUR FIRST NAME

Middle Name

Last Name *

YOUR LAST NAME

Organization/Agency/Firm Name *

Sanctuary for Families

- OR - ☐ I do not have a lawyer

Phone Number (enter as 123-456-7890) *

YOUR PHONE #

Email Address *

YOUR EMAIL

Party You Are Representing (enter your name if you don't have a lawyer) *

CLIENTS FULL NAME

Party Role (e.g., petitioner, plaintiff, respondent, etc.) *

Petitioner

Case Number *

(For example: Index, Indictment, Docket Number, or CSMS #. If there is no case number assigned, please enter "not assigned" in this field.)

not assigned

Case Title *

Family Offense Petition

Interpreter Needed - Include Type of Language

Spanish

2. Option No. 2. CAP Advocate Files for the Petitioner via Email

Sometimes, the court will accept filings via email. If you are having trouble with EDDS, please contact CAP Project Assistant before trying to file via email. If you file via email, it might be a good idea to call the family court and make sure that they have received the petition.

The email should go to one of the below addresses depending on borough:

Bronx County: BronxApplications@nycourts.gov

New York County (Manhattan): ManhattanFamilyCourt@nycourts.gov

Kings County (Brooklyn): KingsFamilyCourt@nycourts.gov

Richmond County (Staten Island): RichmondApplications@nycourts.gov

Queens County: QueensApplications@nycourts.gov

Subject Line: Client Name; County of Filing; Signed Family Offense Petition Attached for Filing

Good morning/afternoon,

Attached please find a signed pro se Family Offense Petition for pro se Petitioner XX. I am filing the petition on their behalf. They can be reached at XXX-XXX-XXXX. I am providing XX pro se assistance as part of Sanctuary for Families' CAP pro bono program, in the limited capacity of drafting XX's pro se Family Offense Petition. I am not an attorney – I am a law student – and I will not be appearing with them during the virtual hearing. [If you are planning to appear, replace with this language: I will be appearing with XX today for the limited purpose of assisting with their first appearance, and for this first appearance only.]

[Optional depending on client needs/preferences:] Since the client does not have an e-mail address, however, please feel free to send me the link to the paperwork after the appearance. I will make sure they get possession of it.

Petitioner's name: XX

** Petitioner requires XX Interpreter

DOB: XX

Current Address: XX

Petitioner safe phone number: XX Petitioner's e-mail address: XX

Petitioner's Children (names, DOBs, residences): XX

Respondent's name: XX Respondent's DOB: XX Respondent address: XX

Respondent's Physical Characteristics¹⁹:

Height: XX

Weight: XX

Hair: XX

Eye Color: XX

Race: XX

Distinguishing Marks: [List any distinguishing features, like tattoos]

Best,

Name [Delete Signature Block]

¹⁹ This is necessary to help the sheriff's office effectuate service.

A couple of notes:

- Don't forget to attach a .pdf of the signed petition
- The subject line of the e-mail should be the client's name, county of origin, and should indicate that a signed petitioner is attached for filing. For example, Sansa Stark, County of Westeros, Signed Family Offense Petition for Filing Attached.
- The phone number you provide should be the one that the petitioner will use for the virtual appearance and one that they can access for the next several hours after they file.
- The e-mail you provide should not be one that the respondent has access to. If the petitioner believes that the respondent may have access to their email then you should write in your filing email that the petitioner does not have a safe email address and that the court can email the papers to you after the Petitioner's appearance.
- Don't forget to delete your signature line so that the clerk doesn't have access to your phone number. We want the clerk to call petitioner, not call you!

3. Option No. 3. CAP Advocate Instructs Petitioners on How To File Themselves

Some petitioners who have safe and easy computer access may prefer to file on their own, especially those who decide they are not currently ready to file their petition. In this case, you can just send them a simple template email to use for filing, or instruct them to print out the family offense petition to bring in to the family court. If filing by email, provide the following template:

Subject Line: Client Name; County of Origin; Signed Family Offense Petition Attached for Filing

Good morning/afternoon,

Attached please find a signed Family Offense Petition for filing.

[Including all the same demographic information as in the template email above]

Best,

[Petitioner's Name]

The email should go to one of the below addresses depending on borough:

Bronx County: BronxApplications@nycourts.gov

New York County (Manhattan): ManhattanFamilyCourt@nycourts.gov

Kings County (Brooklyn): KingsFamilyCourt@nycourts.gov

Richmond County (Staten Island): RichmondApplications@nycourts.gov

Queens County: QueensApplications@nycourts.gov

L. PREPPING PETITIONER FOR THE VIRTUAL FIRST APPEARANCE

Plan to have a “Prep Call”

At some point during the interview process, let your Petitioner know you want to have a call with them to prepare them for the remote appearance. Ideally, this should happen after the petition has been finalized and before it is e-mailed to the Court.

Before speaking with the Petitioner, speak with your CAP Supervisor about what the Petitioner may encounter during the Remote Appearance.

If you plan to appear:

In the e-mail to the Court, include this language: I will be appearing with X today for the limited purpose of assisting with their first appearance, and for this first appearance only.

On the record, state the following: “YOUR NAME, law student advocate with the Courtroom Advocates Project.”

During the “Prep Call”:

1. If the parties live together and the Petitioner is seeking an Exclusionary Order of Protection:
 - a. If asked by the Court, “what type of relief are you seeking?” The Petitioner should be prepared to ask for an exclusionary order of protection and/or to specifically request that the Court exclude the Respondent from his/her home. This is only for parties that are living together at the time of filing!
 - b. The Petitioner needs to listen to hear if the Court states, out loud, that they are granting an “exclusionary order of protection” or an “order of protection excluding the Respondent from the home.”
 - c. If the Petitioner does not hear the Court mention that the order of protection will exclude the Respondent from the home, prepare the Petitioner to ask the Court specifically if they are granting an order of protection excluding the Respondent from the home.
 - d. If the Court declines to issue an exclusionary order of protection, and the parties live together, a Limited/Usual Terms order of protection will be issued.
 - i. This type of order does not require the Respondent to stay away from the Petitioner’s home, school, place of business, etc. or refrain from contacting them. It only requires the Respondent to not commit any family offenses against the Petitioner.
2. If the parties do not live together and the Petitioner is seeking a Full Stay-Away Order of Protection:
 - a. If asked by the Court, “what type of relief are you seeking?” The Petitioner should be prepared to ask for a Full Stay-Away Order of Protection.
 - b. The Petitioner needs to listen to hear if the Court states, out loud, that they are granting a “full stay-away order of protection.”
 - i. If the Petitioner does not hear the Court mention that the order of protection is a full stay-away order of protection, prepare the Petitioner to ask the Court specifically if they are granting a full stay-away order of protection.
 - c. If the Court declines to issue a full stay-away exclusionary order of protection, a Limited/Usual Terms order of protection will be issued.
3. If the Petitioner is requesting that the order of protection include their children and/or pets:

- a. If asked by the Court, “what type of relief are you seeking?” In addition to stating the type of order of protection they are seeking, the Petitioner should specify that they are seeking the order of protection for themselves and their children and/or pet(s).
 - i. The Petitioner needs to listen to hear if the Court states, out loud, that they are including the children (and/or pet(s)) on the order of protection.
 - ii. If the Petitioner does not hear the Court mention that the order of protection will include his/her children (and/or pet(s)), prepare the Petitioner to ask the Court specifically if they are including the children and/or pet(s) on the order of protection.
 4. If the Petitioner has suffered Cyber Sexual Abuse:
 - a. If asked by the Court, “what type of relief are you seeking?” In addition to stating the type of order of protection they are seeking and who they are seeking to be included, the Petitioner should be prepared to point out to the Court that they are also asking that the order of protection specifically require:
 - i. That the Respondent is not to post, transmit, or maintain, or cause a third party to post, transmit, or maintain, any images, pictures, or other media, depicting the Petitioner in a naked state or participating in any sexual act OR threaten to do the same; and/or
 - ii. That the Respondent is to refrain from using Petitioner’s likeness or impersonating Petitioner on any social media.
 - iii. The Petitioner needs to listen to hear if the Court states, out loud, that they are including the Cyber Sexual Abuse provision(s) – sometimes referred to as non-dissemination provisions.
 - b. If the Petitioner does not hear the Court mention that the order of protection will include the Cyber Sexual Abuse provision(s), prepare the Petitioner to ask the Court specifically if they are including those requested provisions.
5. Scenarios and Responses for Speaking with the Court:
 - a. **Start of the Appearance:**
 - i. THE COURT: What type of relief are you seeking? What are you asking for from the Court today?
 - ii. PETITIONER: “Good morning/afternoon your Honor. I am asking for [type of order of protection] an order of protection excluding Respondent from my home OR full stay-away order of protection [who for?] for myself OR for me and my children OR for me, my children, and our dog, Sirius, [any special conditions?] and I am asking that the Respondent not post, transmit, maintain, or cause a third party to post, transmit, or maintain, any images or videos that depict me in a nude state or participating in a sexual act or threaten to do the same, as indicated in the petition.
 - b. **End of the Appearance:**
 - i. THE COURT: I am issuing an order of protection for you today, it is not effective until and unless it is served, how would you like to have it served?
 - ii. PETITIONER: “Your Honor, could I just clarify whether or not the order of protection will exclude the Respondent from my home?”
 - iii. PETITIONER: “Your Honor, could I just ask whether this order of protection will include my children (and/or our dog Sirius), as well?”

- iv. PETITIONER: “Your Honor, could I just ask whether this order will include the language requested in the relief section of my petition, prohibiting the Respondent from posting or transmitting any nude images or videos of me, or threatening to do the same?”
- 6. Service: Inform the petitioner that they should ask for service through the Sheriff, if possible. The court should readily agree to direct service through the Sheriff if the petitioner knows where the respondent lives.
 - a. If the Petitioner cannot provide a possible address where the Respondent may be residing at the time of the filing, the Petitioner will not be able to request that service be effectuated through the Sheriff.
 - b. Explain to the Petitioner that if the Sheriff serves the Respondent, they will not have to find someone to serve Respondent. The Court will send the papers directly to the Sheriff’s office (although it is always a good idea for the Petitioner to follow up with the Sheriff’s office later).

Requesting a Court-Appointed Attorney: If the Petitioner is low-income they may be eligible for a court-appointed attorney (also called an “18b”). Usually the judge will ask the Petitioner if they would like an attorney appointed (the Petitioner should say yes). Explain to the Petitioner that if the judge does not ask them they should request a court-appointed attorney. The judge will then ask a few questions about their income and expenses.

*Note: even if a Petitioner is appointed an 18b attorney during their initial appearance, **it is very unlikely the attorney will reach out to them until closer to the next appearance.** You can help the petitioner find information about their attorney online at eCourts (discussed in the FAQ) and encourage them to reach out.*

*Note: **if a petitioner is not assigned an attorney on the first appearance, they can absolutely ask for one on the next date.** They should bring information about their financial information to the next date, such as pay stubs, public benefit receipts/information, and a filled out Financial Disclosure Affidavit (included in the Appendix)*

- 7. **Adjourn Date:** Inform the Petitioner that the next court date is called the “adjourn date.”
 - a. Inform the Petitioner that the adjourn date will likely be in several months.
 - b. This is NOT the case for Exclusionary orders of protection. Let the Petitioner know that if the Court grants an exclusionary order of protection, the adjourn date (i.e. the next court date) will be sometime in the next few days!
 - c. Prepare the Petitioner to let the Court know if they have any scheduling preference and/or concerns (i.e. Mondays are always terrible for me, Tuesdays are always great for me, or I will be unavailable from June 28, 2020 – July 5, 2020)
- 8. **Tips for Petitioners when Speaking with the Court:**
 - a. Speak loudly and clearly!
 - b. Be polite. Do not interrupt the Judge. If there is something the Petitioner would like to relay to the Court, wait for the Judge to stop speaking before addressing the Court.
 - c. Let the Petitioner know it is okay to ask for clarifications from the Judge if there is something they don’t understand or are confused about.
 - d. It is always a good idea for the Petitioner to have a copy of the petition open in front of

- them, where they can easily see it, during the Remote Appearance. They may need to refer to it during the appearance and this will go a lot more smoothly if it is already open!
- e. Petitioner should also try to take notes of what the judge says during the appearance.
9. Let the Petitioner know you will send them a summary e-mail after the call is finished, which they can (and should) have open and in front of them during the Remote Appearance.

Sample Remote Appearance Summary E-Mail to Petitioner:

After you complete the “prep call,” send the Petitioner a summary of the call via e-mail. We’ve included a template for the e-mail below. Please read the content carefully and change/modify to conform to your Petitioner’s specific circumstances.

Dear (Petitioner’s Name),

We are very glad that you have taken this step for yourself and for your family. Below is a summary of what we discussed with you on the phone as far as next steps. Please read the e-mail in its entirety. Please call me if you have any questions.

- The court will contact you via e-mail in the next few hours.
- The court will tell you to dial into the “Part” to speak with the judge [NOTE TO ADVOCATE: delete whichever option is not applicable]
- 1st Department cases (Bronx & New York Counties) will be scheduled to CVO-1. The call-in number for CVO-1 is 347-378-4143 and the conference ID is 734470014#
- 2nd Department cases (Kings, Queens & Richmond Counties) will be schedule to CVO-2. The call-in number for CVO-2 is 347-378-4143 and the conference ID is 251775882#
- The judge will likely ask you questions such as “is all the information in the petition true and accurate.” Listen and respond to the Judge’s questions.
- Make sure to tell the judge these things:
 - List out EACH form of relief we are requesting (i.e. an order excluding the Respondent from the home, a full stay-away order for the Petitioner [and Petitioner’s children/pets, if applicable], cyber sexual abuse provision...)
 - Tell the Judge that you want this order of protection because ...
 - Ask the judge for service through the Sheriff. (this just means that the court will serve [ABUSER’S NAME] with the order of protection for you so that you don’t have to find someone to serve them yourself)
 - Your availability for the “adjourn date.” The adjourn date is the next court date. Is there a day of the week, time, or specific time period that you cannot be available? Is there a day of the week that is much better than others? If so, let the Court know.
- If the judge does not ask you if you would like a court-appointed attorney, tell the judge you would like to request a court-appointed attorney. Note that the judge will sometimes refer to a court-appointed attorney as an “18(b) attorney.”
 - During the call with the Court, please listen carefully to what the Judge orders and/or says out loud. Choose all that apply (delete any that do not):
 - For example, did you hear the Judge mention that they are issuing an order of protection that excludes ABUSER’S NAME from the home? If not, wait for the Judge to stop speaking and ask, “Your Honor, could I just clarify whether or not the order of protection

- will exclude ABUSER’S NAME from my home?”
- For example, did you hear the Judge mention that the order of protection will include your children? If not, wait for the Judge to stop speaking and ask, “Your Honor, could I just ask whether this order of protection will include my children, CHILDREN’S NAMES AND/OR PET’S NAME, as well?”
 - For example, did you hear the Judge mention that the order of protection will include the language related to the positing of intimate images or videos? If not, wait for the Judge to stop speaking and ask, “Your Honor, could I just ask whether this order will include the language requested in the relief section of my petition, prohibiting ABUSER’S NAME from posting or transmitting any nude images or videos of me, or threatening to do the same?”
 - If you can write down what the Judge orders, this would be helpful. After you speak with the judge, give me a call so that we can discuss what type of relief the judge gave you and next steps.
 - After the Court appearance, the Court will e-mail you a link. In order to access the family court documents, you need to click the link and download the attachments. You can’t send me the link – I won’t be able to access it. Just send me the downloaded paperwork once you are able to download it.
 - Thank you and do not hesitate to reach out with any questions!

Best,

CAP Advocate’s name

M.

AFTER THE FIRST APPEARANCE

Service of Process

The summons, TOP, and signed petition must all be served on the respondent as soon as possible. Without service the TOP is not in effect and therefore is not providing the petitioner with protection. Courts will generally send the summons, TOP, and petition directly to the sheriff for service when an address for the Respondent is provided in the petition.

1. When you receive the TOP from the Petitioner, please make sure to check that the Petitioner has received both the order of protection and a separate document, which says SUMMONS at the top (in the right-hand corner) and lists information about the next court date. Please let your CAP Supervisor know if anything is missing!
2. Please sign up the Petitioner for the Sheriff Notification System, at www.sheriff-assist.org. Please provide the Petitioner with the address and phone number for the appropriate Sheriff's office, listed on page 21, so that they can follow-up about service on their own.

The Petitioner is permitted to serve the Respondent until 24 hours before the adjourn date. However, if the Petitioner is not able to serve, the court may grant an adjournment giving the Petitioner more time to serve. **If the Petitioner attempted to serve numerous times but was unsuccessful, or if the Respondent actively evaded service, the court can, at the next court date, grant alternative or substituted service, such as service by mail to the Respondent's last-known address or service by e-mail. Before resorting to more time for service or substituted service, you should brainstorm with the Petitioner all other possible ways to effect personal service.**

Preparing for the Adjourn Date

Explain that the Petitioner should start gathering and obtaining copies of all papers that pertain to the case, such as: court documents, the affidavit of service, police reports, medical reports, photographs of the injuries, etc. They should collect and save anything that can be considered evidence. While evidentiary materials likely will not be used on the adjourn date (unless an exclusion hearing takes place), it is a good idea for the Petitioner to begin compiling these materials and to be ready to give them to their attorney.

The Adjourn Date (also called Return of Process (ROP) Date):

On the date of the initial remote appearance, the case will be adjourned to give time for the papers to be served. *Please note that due to the current COVID-19 pandemic, almost all cases are being adjourned for 2-3 months at the earliest. However, cases where the order of protection is excluding the Respondent from the home will be much earlier, likely a few days or up to a week after the initial remote appearance.*

On the adjourn date, many different scenarios may arise (see below for possible scenarios discussed in greater detail). If the respondent contests the action, the court will usually set a future date to hold a hearing for the final order of protection. However, in certain situations, such as where an exclusion was requested, the court could conduct a fact-finding hearing that same day.

On the adjourn date, Petitioners may request an attorney if they have not already done so. Petitioners have a right to have one provided by the court if they have a low income (the cut-off varies based on the number of dependents but could go up to approximately \$40,000), or to return to court with their own

privately retained counsel. Information about requesting an attorney is in the Resource Guide that should be sent to Petitioners after they file. Usually, the judge will inform the Petitioner of these rights; however, you should prepare your Petitioner to request an attorney if they want one and the judge neglects to inform the Petitioner of their right to one. An attorney from CAP may also elect to represent a petitioner, a possibility that you will discuss with your CAP Supervisor in advance of the adjourn date. The Respondent also has the same right to request that an attorney be assigned.

Possible Adjourn Date Scenarios:

You should explain to the Petitioner all of the possible outcomes at the adjourn date (discussed below). For example, you will explain what an OP on consent is, what it would mean for the case to go to trial, etc. Together, you will come up with the “game plan” for the adjourn date. The Petitioner will need to figure out what they want, and what they should not or will not agree to. This is important so that on the adjourn date there is no confusion as to the Petitioner’s needs, and the best plan for getting them those things. Find out if the Petitioner would want to testify and get an order on findings instead of default (see below) or if the Petitioner wants a five-year order and is willing to go to trial. Make sure to troubleshoot by asking the Petitioner what they believe the Respondent will do. Also prepare the Petitioner to be composed whenever addressing court personnel. You should explain that the Judge will be making assessments of the Petitioner’s credibility and, if there are children, of the Petitioner’s competence as a parent. If the case is happening in the courthouse, the Petitioner should be dressed in nice business clothing if possible. If the Petitioner needs clothing, you can contact the CAP Project Assistant at Sanctuary for Families to discuss obtaining appropriate court attire (212-349-6009, ext. 251), or discuss with your CAP supervisor.

The Respondent does not show up and service *has* been effected. The judge will:

1. **Send a notice of inquest to the Respondent and adjourn the case again.** On the next date, the judge will conduct the inquest. An inquest is a fact-finding hearing during which the Petitioner testifies and presents relevant evidence, and the court makes findings based on the evidence. The judge will ask the Petitioner questions about the allegations in the petition, and most likely grant a final order of protection.

The Respondent does not show up and service has not been effected. The Petitioner will explain what attempts have been made to effect service, and either:

2. Request additional time to effect service (usually granted);

OR

3. Request that the judge authorize alternative service, e.g., by mail (less likely to be granted on the first adjourn date).

The Respondent shows up.

4. ***The Respondent has an attorney.*** If the petitioner does not have an attorney through CAP, the FJC, or another nonprofit organization/social services provider, they should request a court-appointed attorney (and the case will be adjourned for the attorney to meet the client and prepare the case). If the client does not qualify for a free attorney, the petitioner should ask for additional time to find an attorney and ask the court for a list of low-cost, sliding scale attorneys to contact.
5. ***The Respondent is alone but asks for an attorney.*** If the Respondent (having a low or no income) qualifies for a court-appointed attorney, also called an 18-B attorney, the case will be adjourned. In this case, the client should request a court-appointed attorney or hire an attorney.
6. ***The Respondent is alone and chooses to proceed without an attorney.*** The case will be adjourned and a hearing will take place on one of the next court dates (most likely after several court conferences)
7. ***The Respondent consents to an Order of Protection.*** If the Respondent consents, they are agreeing to an Order of Protection being issued against them, without admitting any wrongdoing, and without the court making a finding of any wrongdoing on the Respondent's part. Most judges will not order 5-year OPs on consent, only 2-year OPs, because the Family Court Act requires a "finding" of aggravating circumstances for a 5- year OP to be issued.

What Might a Typical Return of Process Adjourn Date Look Like?

Service: At the beginning of the appearance, the parties will both be sworn in. The judge will ask the Petitioner if they have effectuated service; if so, the Petitioner should explain how service was effectuated and provide a copy of the completed affidavit of service. If the Sheriff successfully served the Respondent, most of the time the Sheriff's office successfully sends a completed affidavit of service, and the judge will already have it in the system. If service has not been effectuated Petitioner will need

to provide the court with an affidavit of attempted service.

Obtaining Counsel: The judge will ask whether the parties want representation. If the Respondent says “yes,” the judge will ask the Respondent about their employment and finances to assess whether the Respondent is eligible for court-appointed counsel. If the respondent states that they have a low salary, but your petitioner has evidence to the contrary, they should speak up. For example, the petitioner may know that the respondent drives a cab and does not report the cash as income. If the Respondent has an attorney (appointed or privately retained). The Petitioner should request a court appointed attorney or time to seek their own attorney. If the Respondent is not appointed an attorney, it is up to the petitioner whether they want to still request or obtain an attorney, or represent themselves. We usually recommend that petitioners seek an attorney, particularly if they qualify for free counsel (18B attorneys).

Adjourn Dates for Exclusionary Orders of Protection:

Because the remedy of exclusion of the Respondent from the home is viewed by the court as very drastic, they will typically issue a short return date, requiring the petitioner and respondent to return to court anywhere from one day to a week later. On the return date, the respondent is likely to ask the judge for another time to come to the home and get more of his/her belongings, and a time will be scheduled.

Sometimes, a judge will not exclude the respondent during the remote initial appearance, when the petitioner is appearing ex parte, but will order a quick return date at which the respondent will be present to defend their right to stay in the home. At this hearing, the petitioner will make a case that exclusion is reasonably necessary to protect the petitioner. This is not ideal because it does not solve the petitioner’s immediate need for a safe home/environment.

In either situation, prepare the petitioner in advance for the possibility that they might be required to testify at a hearing. Explain that a hearing is likely and that they will have to tell the judge what happened. If the parties waive counsel, the judge will conduct the hearing and ask each party questions. In addition to describing the incident to the judge with specific details, the testimony should also answer the question, “why is it not safe for the respondent to live there,” or “why should the respondent continue to be excluded from the home”?

If the respondent is assigned counsel, the petitioner should request that an attorney be assigned to represent the petitioner.

Possible Presence of Other Parties, Such as ACS or Attorneys for Children at the Adjourn Date

The Administration for Children’s Services (ACS): The petitioner may have current or prior involvement with ACS. As a result, an ACS caseworker may be alerted about the order of protection case and appear on the return date. Petitioners might not disclose this involvement to you. They may think the other case is over or is irrelevant to the OP case. Be aware that it is common for the abuser or the abuser’s family to make baseless allegations against the victim by calling the child abuse hotline, and that every call must be investigated by ACS.

There may also be a report prepared for the judge, called a COI (court ordered investigation) prepared by an ACS worker who may have come to the petitioner’s home to conduct an interview. This is a routine investigation ordered by the court in most custody cases and some visitation cases in which an ACS worker assesses the home environment for the children. It is not necessarily bad for the petitioner if

a COI is ordered.

Attorney(s) for the Child(ren): Attorney for the Child (“AFC”) is an attorney appointed to represent the child(ren). If an AFC is present, it probably means there is a concurrent custody, visitation, or child protective proceeding pending which may be heard alongside the OP case.

Violations of the Order of Protection

If the respondent violates the Order of Protection, the petitioner may proceed either in Criminal Court or Family Court.

In Family Court, the petitioner would file a violation petition.²⁰ The respondent must be served with the violation petition and summons. The parties will then return to court. The court may hear the violation petition, transfer the entire proceeding to Criminal Court, or retain jurisdiction and determine whether the violation constitutes contempt of court and transfer the allegations of criminal conduct to Criminal Court. Upon a finding that the respondent has “willfully failed to obey a court order,” the court may: 1) modify the current temporary or final OP; 2) issue a new OP; 3) order the forfeiture of bail; 4) order payment of reasonable counsel fees; 5) commit respondent to jail for up to six months for each violation; or 6) revoke a firearms license or require the surrender of weapons.²¹

Violations of Family Court Orders of Protection may also be prosecuted as “contempt” in Criminal Court. Petitioners would have to file a police report (either in a police precinct or by calling 911), which would trigger an investigation. Respondents then may be arrested for the crime of Criminal Contempt. If the District Attorney determines that there is enough evidence to proceed with the case, they will formally charge the Respondent. *If the Respondent is formally charged in Criminal Court for the violation of the order of protection, it is likely another order of protection will be issued for the Petitioner, this time through Criminal Court.*

Trial/Hearing for a Final Order of Protection:

The initial remote appearance grants the petitioner a temporary order of protection. A final order of protection can be obtained in two ways: 1) if the respondent consents to the order of protection or 2) if after a hearing and/or trial, a judge determines, by a preponderance of the evidence, that the respondent committed family offenses against the petitioner.

The hearing is often two hearings in one: a fact-finding hearing, followed immediately by a dispositional hearing. The court, however, usually does not draw sharp distinctions between the two; they often blend together. Sometimes they are conducted separately. Often, dispositional hearings do not occur at all, and the court will simply make a dispositional finding directly after the fact-finding hearing. If the litigants are not represented, the hearing will proceed with the judge asking questions of the petitioners concerning the events alleged on their petitions. If the parties are represented, the trial will proceed with counsel conducting direct and cross-examinations.

The fact-finding hearing is a trial in which the rules of evidence apply. Petitioners may present any

²⁰ N.Y. Fam. Ct. Act § 846(a) (Consol. 2003).

²¹ N.Y. Fam. Ct. Act § 846-a (Consol. Supp. 2003). N.Y. Fam. Ct. Act § 812(1) (Consol. Supp. 2003).

admissible evidence (records, pictures, etc.) that they have. This evidence must pertain only to events alleged on the petition. Testimony about other incidents is not relevant during the fact-finding hearing, nor is hearsay allowed into evidence.

The dispositional hearing is when the judge determines what relief the petitioner will be granted. Once the court moves into this hearing, 24 evidence of prior similar incidents is relevant, and hearsay evidence is allowed. This is when any aggravating circumstances should be raised including any facts about the history of domestic violence by the respondent. Aggravating circumstances should also be raised at fact finding.

Testifying/Evidence:

Generally, Petitioners do not need to testify or present evidence at the adjourn date – the court will set later dates for a full hearing. However, if the Petitioner was granted an exclusion at the initial appearance, an exclusionary hearing may occur on the adjourn date if the Respondent contests the exclusion.

If your case involves an exclusion, prepare petitioner for the possibility that they will testify about the violence on the adjourn date. Petitioners will need to be able to describe each incident alleged in the petition specifically, in either chronological or reverse chronological order. The question before the court will be whether the testimony and other evidence presented proved by a preponderance of the evidence that the family offense alleged was in fact committed. To address this question petitioners should confine their accounts to each act of abuse (including verbal abuse), and the injuries, if any.

Extraneous issues such as relationship problems, cheating, etc., are not relevant and are a distraction from the family offenses committed. The best way to prepare is to do a mock hearing where you pretend you are the judge—ask your CAP Supervisor for sample questions. Ask the questions and have them practice describing what happened. It is important to know that the judge may not ask about a specific date or incident. Rather, the questions might be broad, or might even be, “tell me about your relationship with the Respondent.” This is where it is particularly important for the Petitioner to be prepared to give a chronological and well-organized narrative of the incidents of abuse.

Following up with the CAP Supervisor: It is important to keep your CAP Supervisor abreast of your conversations with Petitioner. Your CAP Supervisor is also available to troubleshoot any issues with you and answer any questions you may have.

N. SAMPLE CAP CASE SUMMARY

Advocates will email this to their CAP Supervisors 24 to 48 hours after the first court date.

Advocate's Name, School/Law Firm, and Contact Info (Work & Cell Phone #s & Email):

Petitioner's Name and Contact Info (including address and at least 3 numbers to reach them):

Type of Case(s): List all the cases petitioner filed in court including the Order of Protection, Custody, Visitation, Child support etc.... Also include any other cases pending in any other court, such as a criminal case or a divorce.

Adjourn Date and Part (Judge): Can you attend the adjourn date? If not, please explain.

Background Information: Include any information you may know about the Petitioner's relationship with the Respondent, for example: Whether they are married; if unmarried, how many children they have? How long they have known each other; when did the violence begin, etc....

History of Domestic Violence: Include the most recent, worst, and first incidents of domestic violence. Domestic violence includes verbal, physical, sexual, and emotional abuse

Court Appearance: Detailed description of what happened in court, including who the judge was, what relief the Petitioner received on the Order of Protection, and the judge's treatment of the Petitioner.

Indicate whether we need to refer Petitioner to an Immigration Advocate:

This will typically be if we can help the Petitioner with a VAWA Self-Petition, Battered Spouse Waiver, or a U-Visa. For a VAWA Self-Petition, the Respondent must be Petitioner's spouse and the spouse must be a citizen or Lawful Permanent Resident (LPR – i.e., green card holder). The Petitioner must be 1) a conditional green card holder (lasts 2 years); or 2) Other. For a U-Visa, the Petitioner must have assisted authorities in the prosecution of a crime. Petitioners may also qualify for U-Visa status by pursuing an order of protection in family court.

Comments: Any other information that may be relevant to the case.

IV.

UNDERSTANDING CUSTODY AND VISITATION ISSUES

As a CAP Advocate, your role is limited to the drafting and filing of the family offense petition in order to obtain an order of protection. That being said, the Petitioner may have questions and/or concerns regarding other family law matters, including questions about custody and/or visitation. As such, we thought it would be helpful to give you some brief information related to custody and visitation concerns/questions, which may help you in giving brief information about these issues. If you are posed a question that cannot be answered by referring to the information below or requires legal advice of any kind, refer the client back to Sanctuary for Families.

- The standard used by a court in determining custody and visitation issues is **“best interests of the child.”**
- **Liberal and meaningful visitation with the non-custodial parent is presumed to be in the best interests of the child.** Research shows that children benefit from contact with their non-custodial parent. (In other words, the presumption is that a child is entitled to and needs to have contact with the respondent parent.)
- Visitation is a reciprocal right between child and parent: thus, not only does the non-custodial parent have a right to visit with the child, but the child has a right to visit with the non-custodial parent. Visitation issues generally will be viewed by the Court through the lens of the child’s needs and interests, not the needs and interests of the custodial parent.
- Warn DV victims that **some visitation will be granted**, absent extraordinary circumstances.
- The “standard” visitation for a non-custodial parent, where there is no domestic violence, is: alternate weekends, from Friday nights through Sunday, one night for dinner during the week, alternate holidays, and two weeks summer vacation. This does not mean every case has this ordered, but if the respondent parent or the respondent parent’s attorney asks for it, don’t be shocked: it is the usual standard in “normal” cases.
- **Suspension or denial of visitation rights altogether is extremely rare.** It is unrealistic for the custodial parents to make such a request, absent very compelling reasons (such as child sexual abuse or risk of serious physical injury).
- **Termination of parental rights is not an option and usually will only be considered if there has been an extended period (many years) of abandonment of the child without good cause.** Even then, the Court will likely first consider whether the child could see the non-custodial parent in a supervised setting.

Pursuant to statute (DRL §240(1)), a Court must take domestic violence into account when deciding custody and visitation issues, where the domestic violence has been proven by a preponderance of the evidence. Some courts have held that if there is no evidence that the children have been harmed or are in danger of being harmed, then the domestic violence will not preclude reasonable, unsupervised visitation. Other courts have held that domestic violence against the petitioner, especially in the presence of the child, is inherently detrimental to the child and relevant to the assessment of the respondent’s parenting skills.

- **Visitation rights will only be taken away or modified if it is shown to be detrimental to the child’s best interests.** The right to visitation will not be taken away or modified merely because the non-custodial parent is a bad person, or because the respondent fails to pay child support, or

for some other misdeed. (The petitioner must be careful of how emphatically s/he argues that the respondent is dangerous or harmful to the child if there is any chance that they will reconcile. If the petitioner claims that the respondent should not be around the child, but later reconciles, the petitioner may face charges of child neglect.)

- **Examples of valid reasons to limit visitation are:**
 - The respondent parent has been violent or abusive toward the child.
 - The respondent parent has been violent and abusive toward the other parent, and the petitioner is concerned that the respondent will be violent toward the child.
 - The respondent parent has shown poor parenting skills, such as leaving the child unattended, failing to attend to their health or nutrition needs, etc.
 - The respondent parent has not seen the child in a while, and the child needs an opportunity to become comfortable with the respondent parent again.
 - The child witnessed violence against the petitioner and is scared of the respondent.
- **Under the above circumstances, a DV victim may be successful in having the Court order a period of supervised visitation.** Supervised visitation can take many forms. Supervised visitation may include:
 - Visitation supervised by a trusted family member or friend. Courts favor such arrangements, on the theory that the child will be more comfortable, and the setting will be less contrived.
 - Visitation supervised through an agency. The wait lists for this type of visitation are usually long, and the schedule may not accommodate an employed parent. The Court must order the visitation supervised through an agency.
 - The client may hire a social worker or other person to supervise visitation.
- **Supervised visitation will not last forever, in fact it may only last until the next court date.** If it goes well, the Court will gradually increase the visitation on subsequent court dates until a final schedule is determined. Many victims of domestic violence become hyper vigilant about their children after they separate from the abuser; the client should be referred to, and encouraged to contact, a domestic violence agency, such as Sanctuary for Families, for counseling and support.

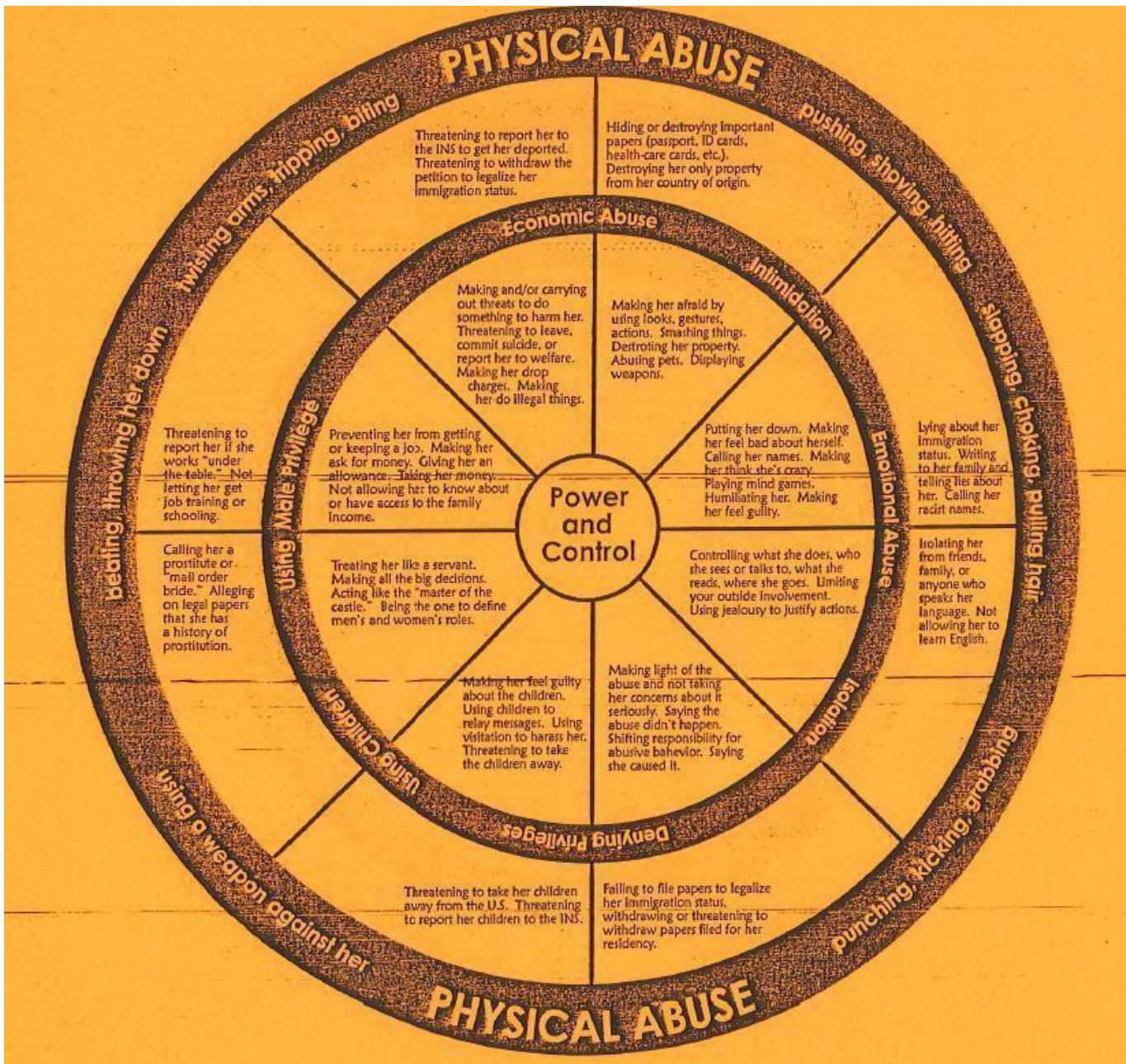
V. UNDERSTANDING DOMESTIC VIOLENCE

POWER AND CONTROL WHEEL

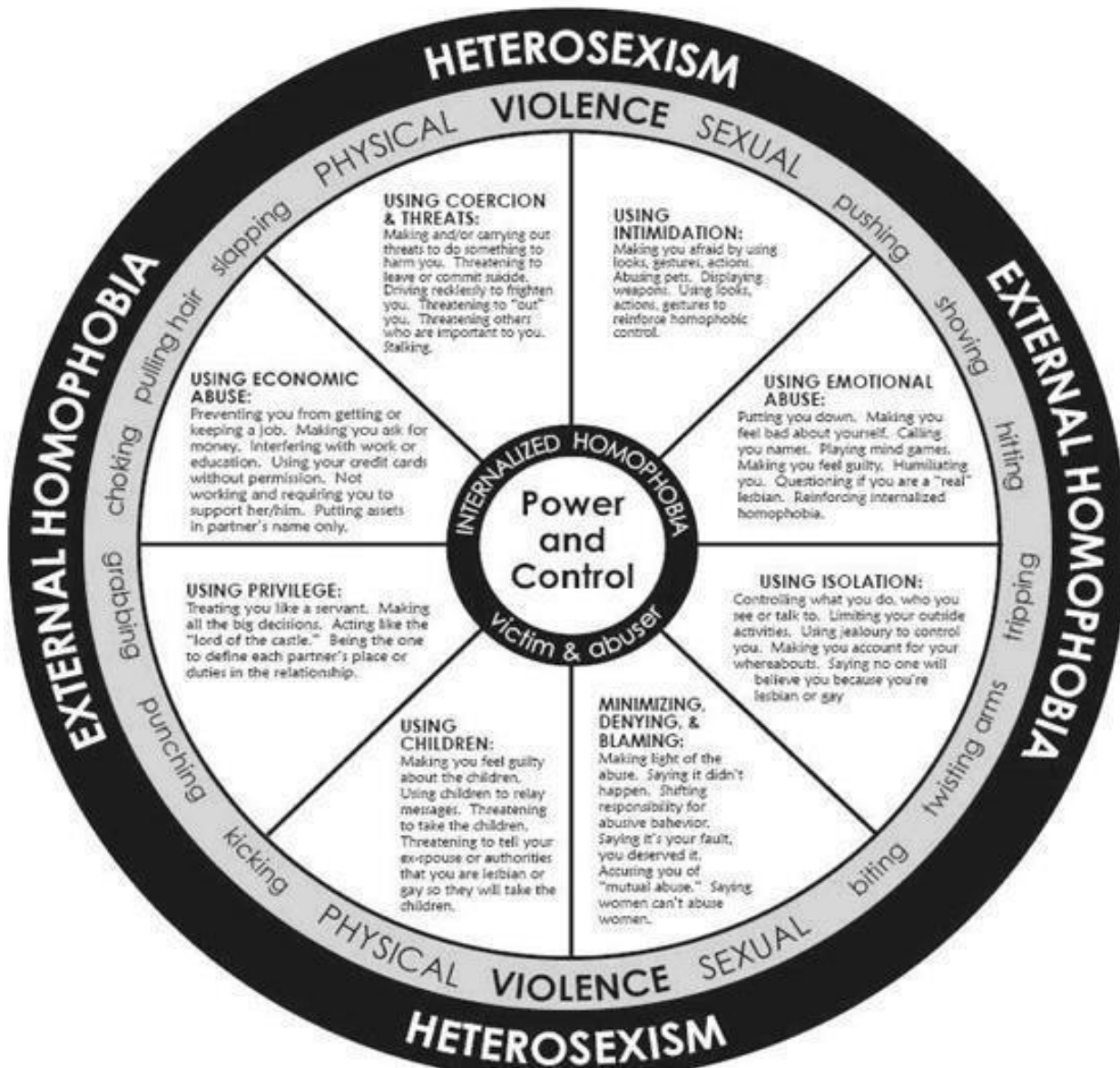


DOMESTIC ABUSE INTERVENTION PROJECT
202 East Superior Street
Duluth, Minnesota 55802
218-722-2781
www.duluth-model.org

IMMIGRANT POWER AND CONTROL WHEEL



LGBTQ+ POWER AND CONTROL WHEEL



DOMESTIC VIOLENCE WITHIN THE LESBIAN, GAY, BISEXUAL, TRANSGENDER, QUEER (LGBTQ+) COMMUNITY

Lesbian, Gay, Bisexual and Transgender victims of domestic violence often face additional barriers when seeking help. An abuser can prevent a victim from seeking services by threatening to “out” a victim’s sexual orientation and/or gender identity to their family, employer, community, religious communities. Moreover, when a victim is able to access services, such as filing for an order of protection, a victim may be required to “come out” each time they seek protection.

LGBTQ victims can experience re-victimization by authorities and social service agencies who do not understand or who have not had training on the diversity of their experiences. As a result, LGBTQ victims are placed in the uncomfortable position of exposing misconceptions about whom can be victims of domestic violence – namely, that women cannot be abusers and that men cannot be victims. In some cases, LGBTQ victims can also be required to confront the misconceptions that abuse between individuals in same-sex relationships is “mutual” or that a masculine presenting partner must be the abuser. For example, in situations where the police are called, responding officers may misinterpret who is the abuser or victim; may dismiss the violence altogether; or may mistreat or misidentify someone who identifies as transgender or gender non- conforming. Domestic Violence is based on one person’s use of emotional, sexual, economic, and physical abuse against another for the purposes of power and control. The relative sizes, appearances, or genders of the petitioner and respondent do not exclude the different manifestations of an abusive relationship.

Please review the LGBTQ Power & Control Wheel on the previous page before you begin working with a petitioner who identifies as an LGBTQ domestic violence victim.

Tips for working with LGBT Petitioners

- When interviewing petitioners for CAP, using inclusive language can facilitate communication between CAP advocates and petitioner. For example, ask “Against whom are you seeking an order of protection?” rather than “Do you want an order of protection against your husband or boyfriend?”
- Acknowledging the petitioner’s gender identity by using the name or pronoun that the petitioner prefers. For the purposes of legal documents, such as drafting a family offense petitioner, it may be required to ask a petitioner about their legal name, in which case the CAP Advocate can explain the purpose of providing one’s legal name for a family offense petition.
- Above all, it is essential that CAP advocates who do not identify as LGBTQ acknowledge their own gaps in understanding an LGBTQ individual’s lived experience and respectfully ask the petitioner for clarification on certain things that could be important to their legal case. If the CAP Advocate can communicate the context and need for why certain information is needed, it can minimize miscommunication.
- In New York City, the Anti-Violence Project (AVP) provides free and confidential assistance to crime victims through its 24-hour bilingual hotline (212-714-1141). Sanctuary for Families can also help identify other LGBTQ-specific referrals.

VI.

FREQUENTLY ASKED QUESTIONS (FAQ)

Q: What information and/or material can I expect with a referral?

A. The referral email that you receive from Sanctuary should include some biographical information related to the petitioner, respondent, and/or any children in common. Additionally, the referral should include a brief history of the domestic violence that has occurred during the course of the parties' relationships. You may also receive documents and/or material, including, but not limited to: court documents, police reports, screenshots of text messages, and photographs of injuries. Please review all petitioner's documents before your first call with them. If the history and/or notes section mentions documents/material that you have not received with the referral, make sure to follow up with the petitioner regarding this material!

Q: What is the Sample Family Offense Petition?

A. The Sample Family Offense Petition is a fully drafted example of a model family offense Petition (both stylistically and substantively). It is extremely important that you review this material before your CAP case, as it will be extremely helpful to you when you begin to draft your incidents. The Sample Family Offense Petition can be found in of the CAP Manual and will also likely be attached as a separate PDF to your referral e-mail.

Q. Should we be drafting the Family Offense Petition in real-time while we're on the phone interviewing our pro se client?

A. This really depends on the preferences of the CAP advocates and their pro se client. Drafting the family offense petition in real-time as you do the interview will likely result in a longer phone call, so you may want to ask the client how much time they have to talk to you. If they have childcare responsibilities or other demands, they may not be able to stay on the phone with you for an extended period of time and therefore may prefer that you draft the petition after the interview and just call them back with any clarifying questions. Additionally, if this is your first time drafting a family offense petition you may not feel comfortable doing it while you're talking to the client. It really depends on your comfort level and your client's preferences and availability.

Q: What time does the court typically call the client? How long does the interview process take?

A: The amount of time it takes the court to call petitioners really varies depending on how busy the court is that day. The safest thing to do is advise petitioners that they should be available for a call as soon as the petition is filed and should remain available for the next couple of hours. The interview process varies in duration depending on the availability of the petitioner to talk on the phone, the length and/or complexity of the DV history, and whether you are using an interpreter.

Q: My petitioner hasn't provided me with any additional documents/photos/evidence and the notes don't mention anything – should I ask the petitioner about additional evidence? How will I know to ask?

A. Absolutely! It is perfectly fine to follow up to see if there is any material the petitioner has in his or her possession that may be relevant or helpful to your drafting. For example:

- If the petitioner mentions that they currently have an order or protection against the abuser (or had ones in the past), you can ask them if they have a copy of these orders and any documentation related to the case (i.e. if the prior order is a Family Court Order of Protection,

ask if they are in possession of the prior Family Offense Petition – a.k.a. “the document where it described the incidents of domestic violence between the you and the abuser,” as many petitioners may be unfamiliar with the term “family offense petition.”)

- If the petitioner mentions that as a result of a described incident they suffered injuries and/or their property was damaged, ask if they took photographs of the injuries and/or damage. But make sure to let the petition know that it is completely okay if they did not take pictures and that you are asking only so you can make sure you are collecting all the relevant information that exists, not because they should or should not have taken any particular action!
- When the petitioner is discussing any relevant or important communications that they had with the respondent (including, but not limited to, threats, admissions, apologies, etc.), ask if these communications were in person or via text message/e-mail. If they are in text messages, ask the petitioner to take a screenshot of the relevant messages so that they can e-mail them to you.

Q: What if the client is not returning my calls or emails?

A. All of the clients we refer to you have given their consent for you to reach out to them to assist with their family offense petitions, so hopefully you won’t have many instances where clients do not return your calls/emails. However, clients will sometimes change their minds about going through with the order of protection process and may decide they don’t want to talk with you anymore. **We recommend at least two outreach calls, leaving a voicemail both times, and an email follow-up if they have a safe email address.** Please let your Sanctuary supervising attorney know if you are unable to reach your assigned client so we can discuss whether it makes sense to continue trying or to close the advocacy case.

Q: What’s the best way to stay in contact with the CAP Supervisor?

A. The best way to get in contact with the CAP Supervisor for those types of questions is typically email. For questions requiring longer explanations/information, a phone call might be best. For sending copies of the petition, please e-mail the CAP Supervisor’s specific e-mail address.

Q: How much time should I spend interviewing, drafting, and/or editing?

A. Obviously every case, every petitioner, and every advocate is different. So there is no one- size fits all approach. That being said, usually advocates spend up to 15 hours on their entire CAP cases (including the 4 hour training module).

Q: What if my petitioner has not been able to serve the papers on his/the abuser before their next court date?

A. The petitioner **MUST** go back to court on the adjourn date, even if they have not had an opportunity to serve the papers, or his/her case will be dismissed. (1) The petitioner can ask for more time to serve, in which case the court will extend the Temporary Order of Protection and give the petitioner another adjourn date to return to court and to attempt service. (2) If the petitioner has made numerous efforts to serve the papers on his/her abuser, and the respondent is either actively evading service or difficult to find, the petitioner can inform the court of the efforts petitioner has made to serve the papers and request “alternate service” (sometimes also referred to as “substitute service”), which could include service by text message, by e-mail, and/or by mail on the abuser’s last-known address.

Q: Is there anywhere online I can find information about a petitioner's case? How can I find information about an abuser's criminal case? How can I get copies of prior Orders of Protection in Family Court?

A: There is very limited information that is accessible publicly online. However, you can find the following information online through the eCourts webpage located at <https://iapps.courts.state.ny.us/webcivil/ecourtsMain>.

- **Current criminal cases:** You can search under “WebCriminal” (on the left) and “Defendant” (on the left) to look up active, pending criminal cases. You can find information such as the charges, appearances, and the assigned attorney. Be sure to click on the links at the bottom of the page to access this information. This page will not show old/closed criminal cases, only currently pending ones.
- **Current family court cases:** You can search under “WebFamily” (on the left) to find current Family Court cases IF you have either a Docket number or File number. You should always search by File number because it includes all cases associated with a family (i.e. the File number is like a book, Docket numbers are like pages). You can see upcoming appearances, assigned attorneys, and other relevant information. Check out the Appendix for a reminder on different docket number types and what they mean.
- **Current supreme court cases:** You can search under “WebSupreme” (on the left) to see active Supreme Court cases for clients. You can search by name or Index number. However, not all Supreme court cases show up here for some reason!

Q: How do I contact the Sheriff to see if the Respondent has been served? When should I call them? What if they haven't served? How many times do they try to serve?

Please see the prior section entitled, “Sheriff Offices – Locations and Numbers” under section III.A. You, or the petitioner, can check on the status of service at: <https://sheriff-assist.org/>. You should call the Sheriff to check on service – locations and numbers are copied below here.

Sheriff Offices – Locations and Numbers

Bronx: 3030 Third Avenue, 2nd Floor, Bronx, NY 10455 — (718) 993-3880

Brooklyn: 210 Joralemon Street, 9th Floor, Brooklyn, NY 11201 — (718)-488-3545

Manhattan: 66 John Street, 13th Floor, NY, NY 10038 — (212)-487-9734

Queens: 30-10 Starr Avenue, LIC, NY 11101 — (718)-707-2170

Staten Island: 350 St. Marks Place #409, Staten Island, NY 10301 — (718)-815-8407

VII.

APPENDIX

A. FAMILY COURT ACT – EXCERPTED SECTIONS

ARTICLE 8

FAMILY OFFENSES PROCEEDINGS

Sec. 812. Procedures for family offense proceedings.

1. Jurisdiction. The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute 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 as set forth in subdivision one of section 130.60 of the penal law, 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, criminal obstruction of breathing or blood circulation, strangulation in the second degree, strangulation in the first degree, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree, coercion in the second degree or coercion in the third degree as set forth in subdivisions one, two and three of section 135.60 of the penal law between spouses or former spouses, or between parent and child or between members of the same family or household except that if the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law, then the family court shall have exclusive jurisdiction over such proceeding. Notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section. In any proceeding pursuant to this article, a court shall not deny an order of protection, or dismiss a petition, solely on the basis that the acts or events alleged are not relatively contemporaneous with the date of the petition, the conclusion of the fact-finding or the conclusion of the dispositional hearing. For purposes of this article, "disorderly conduct" includes disorderly conduct not in a public place. For purposes of this article, "members of the same family or household" shall mean the following:

- (a) persons related by consanguinity or affinity;
- (b) persons legally married to one another;
- (c) persons formerly married to one another regardless of whether they still reside in the same household;
- (d) persons who have a child in common regardless of whether such persons have been married or have lived together at any time; and
- (e) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship".

2. Information to petitioner or complainant. The chief administrator of the courts shall designate the appropriate persons, including, but not limited to district attorneys, criminal and family court clerks,

corporation counsels, county attorneys, victims assistance unit staff, probation officers, warrant officers, sheriffs, police officers or any other law enforcement officials, to inform any petitioner or complainant bringing a proceeding under this article, before such proceeding is commenced, of the procedures available for the institution of family offense proceedings, including but not limited to the following:

- (a) That there is concurrent jurisdiction with respect to family offenses in both family court and the criminal courts;
- (b) That a family court proceeding is a civil proceeding and is for the purpose of attempting to stop the violence, end the family disruption and obtain protection. Referrals for counseling, or counseling services, are available through probation for this purpose;
- (c) That a proceeding in the criminal courts is for the purpose of prosecution of the offender and can result in a criminal conviction of the offender;
- (d) That a proceeding or action subject to the provisions of this section is initiated at the time of the filing of an accusatory instrument or family court petition, not at the time of arrest, or request for arrest, if any;
- (e) [Repealed.]
- (f) That an arrest may precede the commencement of a family court or a criminal court proceeding, but an arrest is not a requirement for commencing either proceeding; provided, however, that the arrest of an alleged offender shall be made under the circumstances described in subdivision four of section 140.10 of the criminal procedure law;
- (g) That notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section.

3. Official responsibility.

No official or other person designated pursuant to subdivision two of this section shall discourage or prevent any person who wishes to file a petition or sign a complaint from having access to any court for that purpose.

4. Official forms.

The chief administrator of the courts shall prescribe an appropriate form to implement subdivision two of this section.

5. Notice.

Every police officer, peace officer or district attorney investigating a family offense under this article shall advise the victim of the availability of a shelter or other services in the community and shall immediately give the victim written notice of the legal rights and remedies available to a victim of a family offense under the relevant provisions of the criminal procedure law, the family court act and the domestic relations law. Such notice shall be available in English and Spanish and, if necessary, shall be delivered orally and shall include but not be limited to the following statement:

"If you are the victim of domestic violence, you may request that the officer assist in providing for your safety and that of your children, including providing information on how to obtain a temporary order of protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you, or assist in making arrangement to take you, and your children to a safe place within such officer's jurisdiction, including but not limited to a domestic violence program, a family member's or a friend's residence, or a similar place of safety. When the officer's jurisdiction is more than a single county, you may ask the officer to take you or make arrangements to take you and your children to a place of safety in the county where the incident occurred. If you or your children are in need of medical treatment, you have the right to request that the officer assist you in obtaining such medical treatment. You may request a copy of any incident reports at no cost from the law enforcement agency. You have the right to seek legal counsel of your own choosing and if you proceed in family

court and if it is determined that you cannot afford an attorney, one must be appointed to represent you without cost to you.

You may ask the district attorney or a law enforcement officer to file a criminal complaint. You also have the right to file a petition in the family court when a family offense has been committed against you. You have the right to have your petition and request for an order of protection filed on the same day you appear in court, and such request must be heard that same day or the next day court is in session. Either court may issue an order of protection from conduct constituting a family offense which could include, among other provisions, an order for the respondent or defendant to stay away from you and your children. The family court may also order the payment of temporary child support and award temporary custody of your children. If the family court is not in session, you may seek immediate assistance from the criminal court in obtaining an order of protection.

The forms you need to obtain an order of protection are available from the family court and the local criminal court (the addresses and telephone numbers shall be listed). The resources available in this community for information relating to domestic violence, treatment of injuries, and places of safety and shelters can be accessed by calling the following 800 numbers (the statewide English and Spanish language 800 numbers shall be listed and space shall be provided for local domestic violence hotline telephone numbers).

Filing a criminal complaint or a family court petition containing allegations that are knowingly false is a crime."

The division of criminal justice services in consultation with the state office for the prevention of domestic violence shall prepare the form of such written notice consistent with the provisions of this section and distribute copies thereof to the appropriate law enforcement officials pursuant to subdivision nine of section eight hundred forty-one of the executive law. Additionally, copies of such notice shall be provided to the chief administrator of the courts to be distributed to victims of family offenses through the family court at such time as such persons first come before the court and to the state department of health for distribution to all hospitals defined under article twenty-eight of the public health law. No cause of action for damages shall arise in favor of any person by reason of any failure to comply with the provisions of this subdivision except upon a showing of gross negligence or willful misconduct.

Sec. 818. Venue.

Proceedings under this article may be originated in the county in which the act or acts referred to in the petition allegedly occurred or in which the family or household resides or in which any party resides. For the purposes of this section, residence shall include any residential program for victims of domestic violence, as defined in subdivision four of section four hundred fifty-nine- a of the social services law, or a facility which provides shelter for homeless persons or families on an emergency of temporary basis.

Sec. 826. Service of summons.

(a) Unless the court issues a warrant pursuant to section eight hundred twenty-seven of this part, service of a summons and petition shall be made by delivery of a true copy thereof to the person summoned at least twenty-four hours before the time stated therein for appearance. If so requested by the respondent, the court shall not proceed with the hearing or proceeding earlier than three days after such service.

(b) If after reasonable effort, personal service is not made, the court may at any stage in the proceedings make an order providing for substituted service in the manner provided for substituted service in civil process in courts of record.

Sec. 827. Issuance of warrant; certificate of warrant.

(a) The court may issue a warrant, directing that the respondent be brought before the court, when a petition is presented to the court under section eight hundred twenty-one and it appears that:

- i. the summons cannot be served; or
- ii. he respondent has failed to obey the summons; or
- iii. the respondent is likely to leave the jurisdiction; or
- iv. a summons, in the court's opinion, would be ineffectual; or
- v. the safety of the petitioner is endangered; or
- vi. the safety of a child is endangered; or
- vii. aggravating circumstances exist which require the immediate arrest of the respondent. For the purposes of this section aggravating circumstances shall mean physical injury or serious physical injury to the petitioner caused by the respondent, the use of a dangerous instrument against the petitioner by the respondent, a history of repeated violations of prior orders of protection by the respondent, prior convictions for crimes against the petitioner by the respondent or the exposure of any family or household member to physical injury by the respondent and like incidents, behaviors and occurrences which to the court constitute an immediate and ongoing danger to the petitioner, or any member of the petitioner's family or household.

(b) The petitioner may not serve a warrant upon the respondent unless the court itself grants such permission upon the application of the petitioner. The clerk of the court may issue to the petitioner or to the representative of an incorporated charitable or philanthropic society having a legitimate interest in the family a certificate stating that a warrant for the respondent has been issued by the court. The presentation of such certificate by said petitioner or representative to any peace officer, acting pursuant to his special duties, or police officer authorizes him to arrest the respondent and take him to court.

(c) A certificate of warrant expires ninety days from the date of issue but may be renewed from time to time by the clerk of the court.

(d) Rules of court shall provide that a record of all unserved warrants be kept and that periodic reports concerning unserved warrants be made.

Sec. 828. Temporary order of protection; temporary order for child support.

1. (a) Upon the filing of a petition or counter-claim under this article, the court for good cause shown may issue a temporary order of protection, which may contain any of the provisions authorized on the making of an order of protection under section eight hundred forty-two, provided that the court shall make a determination, and the court shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this subdivision, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the temporary order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons. (b) Upon the filing of a petition under this article, or as soon thereafter as the petitioner appears before the court, the court shall advise the petitioner of the right to proceed in both the family and criminal courts, pursuant to the provisions of section one hundred fifteen of this act.

2. A temporary order of protection is not a finding of wrongdoing.

3. The court may issue or extend a temporary order of protection ex parte or on notice simultaneously with the issuance of a warrant, directing that the respondent be arrested and brought before the court, pursuant to section eight hundred twenty-seven of this article.

4. Notwithstanding the provisions of section eight hundred seventeen of this article the court may, together with a temporary order of protection issued pursuant to this section, issue an order for temporary child support, in an amount sufficient to meet the needs of the child, without a showing of immediate or emergency need. The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of the respondent may be unavailable. Where such information is available, the court may make an award for temporary child support pursuant to the formula set forth in subdivision one of section four hundred thirteen of this act. An order making such award shall be deemed to have been issued pursuant to article four of this act. Upon making an order for temporary child support pursuant to this subdivision, the court shall advise the petitioner of the availability of child support enforcement services by the support collection unit of the local department of social services, to enforce the temporary order and to assist in securing continued child support and shall set the support matter down for further proceedings in accordance with article four of this act. Where the court determines that the respondent has employer-provided medical insurance, the court may further direct, as part of an order of temporary support under this subdivision, that a medical support execution be issued and served upon the respondent's employer as provided for in section fifty-two hundred forty-one of the civil practice law and rules.

Sec. 841. Orders of disposition.

At the conclusion of a dispositional hearing under this article, the court may enter an order:

- (a) dismissing the petition, if the allegations of the petition are not established; or
- (b) suspending judgment for a period not in excess of six months; or
- (c) placing the respondent on probation for a period not exceeding one year, and requiring respondent to participate in a abuser's education program designed to help end violent behavior, which may include referral to drug and alcohol counseling, and to pay the costs thereof if respondent has the means to do so, provided however that nothing contained herein shall be deemed to require payment of the costs of any such program by the petitioner, the state or any political subdivision thereof; or
- (d) making an order of protection in accord with section eight hundred forty-two of this part; or
- (e) directing payment of restitution in an amount not to exceed ten thousand dollars. An order of restitution may be made in conjunction with any order of disposition authorized under subdivisions (b), (c), or (d) of this section. In no case shall an order of restitution be issued where the court determines that the respondent has already paid such restitution as part of the disposition or settlement of another proceeding arising from the same act or acts alleged in the petition before the court.

No order of protection may direct any party to observe conditions of behavior unless the party requesting the order of protection has served and filed a petition or counterclaim in accordance with section one hundred fifty- four-b of this act. Nothing in this section shall preclude the issuance of a temporary order of protection ex parte, pursuant to section eight hundred twenty- eight of this article. Nothing in this section shall preclude the issuance of both an order of probation and an order of protection as part of the order of disposition.

Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section eight hundred twelve of this article.

Sec. 842. Order of protection.

An order of protection under section eight hundred forty-one of this part may set forth reasonable

conditions of behavior to be observed for a period not in excess of two years by the petitioner or respondent or for a period not in excess of five years upon (i) a finding by the court on the record of the existence of aggravating circumstances as defined in paragraph (vii) of subdivision (a) of section eight hundred twenty-seven of this article; or (ii) a finding by the court on the record that the conduct alleged in the petition is in violation of a valid order of protection. Any finding of aggravating circumstances pursuant to this section shall be stated on the record and upon the order protection. The court may also, upon motion, extend the order of protection for a reasonable period of time upon a showing of good cause or consent of the parties. The fact that abuse has not occurred during the pendency of the order shall not, in itself, constitute sufficient ground for denying or failing to extend the order. The court must articulate a basis for its decision on the record. The duration of any temporary order shall not by itself be a factor in determining the length or issuance of any final order. Any order of protection issued pursuant to this section shall specify if an order of protection is in effect. Any order of protection issued pursuant to this section may require the petitioner or the respondent:

- (a) to stay away from the home, school, business or place of employment of any other party, the other spouse, the other parent, or the child, and to stay away from any other specific location designated by the court, provided that the court shall make a determination, and shall state such determination in a written decision or on the record, whether to impose a condition pursuant to this subdivision, provided further, however, that failure to make such a determination shall not affect the validity of such order of protection. In making such determination, the court shall consider, but shall not be limited to consideration of, whether the order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, extent of past or present injury, threats, drug or alcohol abuse, and access to weapons;
- (b) to permit a parent, or a person entitled to visitation by a court order or a separation agreement, to visit the child at stated periods;
- (c) to refrain from committing a family offense, as defined in subdivision one of section eight hundred twelve of this act, or any criminal offense against the child or against the other parent or against any person to whom custody of the child is awarded, or from harassing, intimidating or threatening such persons;
- (d) to permit a designated party to enter the residence during a specified period of time in order to remove personal belongings not in issue in this proceeding or in any other proceeding or action under this act or the domestic relations law;
- (e) to refrain from acts of commission or omission that create an unreasonable risk to the health, safety or welfare of a child;
- (f) to pay the reasonable counsel fees and disbursements involved in obtaining or enforcing the order of the person who is protected by such order if such order is issued or enforced;
- (g) to require the respondent to participate in a abuser's education program designed to help end violent behavior, which may include referral to drug and alcohol counseling, and to pay the costs thereof if the person has the means to do so, provided however that nothing contained herein shall be deemed to require payment of the costs of any such program by the petitioner, the state or any political subdivision thereof; and
- (h) to provide, either directly or by means of medical and health insurance, for expenses incurred for medical care and treatment arising from the incident or incidents forming the basis for the issuance of the order;
- (i) 1. to refrain from intentionally injuring or killing, without justification, any companion animal the respondent knows to be owned, possessed, leased, kept or held by the petitioner or a minor child residing in the household.

2. "Companion animal"²², as used in this section, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law;

(j) 1. to promptly return specified identification documents to the protected party, in whose favor the order of protection or temporary order of protection is issued; provided, however, that such order may: (A) include any appropriate provision designed to ensure that any such document is available for use as evidence in this proceeding, and available if necessary for legitimate use by the party against whom such order is issued; and (B) specify the manner in which such return shall be accomplished.

2. For purposes of this subdivision, "identification document" shall mean any of the following: (A) exclusively in the name of the protected party: birth certificate, passport, social security card, health insurance or other benefits card, a card or document used to access bank, credit or other financial accounts or records, tax returns, any driver's license, and immigration documents including but not limited to a United States permanent resident card and employment authorization document; and (B) upon motion and after notice and an opportunity to be heard, any of the following, including those that may reflect joint use or ownership, that the court determines are necessary and are appropriately transferred to the protected party: any card or document used to access bank, credit or other financial accounts or records, tax returns, and any other identifying cards and documents; and (k) to observe such other conditions as are necessary to further the purposes of protection.

The court may also award custody of the child, during the term of the order of protection to either parent, or to an appropriate relative within the second degree. Nothing in this section gives the court power to place or board out any child or to commit a child to an institution or agency.

Notwithstanding the provisions of section eight hundred seventeen of this article, where a temporary order of child support has not already been issued, the court may in addition to the issuance of an order of protection pursuant to this section, issue an order for temporary child support in an amount sufficient to meet the needs of the child, without a showing of immediate or emergency need. The court shall make an order for temporary child support notwithstanding that information with respect to income and assets of the respondent may be unavailable. Where such information is available, the court may make an award for temporary child support pursuant to the formula set forth in subdivision one of section four hundred thirteen of this act. Temporary orders of support issued pursuant to this article shall be deemed to have been issued pursuant to section four hundred thirteen of this act.

Upon making an order for temporary child support pursuant to this subdivision, the court shall advise the petitioner of the availability of child support enforcement services by the support collection unit of the local department of social services, to enforce the temporary order and to assist in securing continued child support, and shall set the support matter down for further proceedings in accordance with article four of this act.

Where the court determines that the respondent has employer-provided medical insurance, the court may further direct, as part of an order of temporary support under this subdivision, that a medical support execution be issued and served upon the respondent's employer as provided for in section fifty-two hundred forty-one of the civil practice law and rules.

In any proceeding in which an order of protection or temporary order of protection or a warrant has been issued under this section, the clerk of the court shall issue to the petitioner and respondent and his counsel and to any other person affected by the order a copy of the order of protection or temporary order of protection and ensure that a copy of the order of protection or temporary order of protection be

²² Section 350 of the New York State Agriculture and Markets Law provides that a "companion animal" or "pet" means "any dog or cat, and shall also mean any other domesticated animal normally maintained in or near the household of the owner or person who cares for such other domesticated animal. 'Pet' or 'companion animal' shall not include a "farm animal" as defined in this section."

transmitted to the local correctional facility where the individual is or will be detained, the state or local correctional facility where the individual is or will be imprisoned, and the supervising probation department or division of parole where the individual is under probation or parole supervision. Notwithstanding the foregoing provisions, an order of protection, or temporary order of protection where applicable, may be entered against a former spouse and persons who have a child in common, regardless of whether such persons have been married or have lived together at any time, or against a member of the same family or household as defined in subdivision one of section eight hundred twelve of this article.

In addition to the foregoing provisions, the court may issue in order, pursuant to section two hundred twenty-seven-c of the real property law, authorizing the party for whose benefit any order of protection has been issued to terminate a lease or rental agreement pursuant to section two hundred twenty-seven-c of the real property law.

The protected party in whose favor the order of protection or temporary order of protection is issued may not be held to violate an order issued in his or her favor nor may such protected party be arrested for violating such order.

Sec. 842-a. Suspension and revocation of a license to carry, possess, repair or dispose of a firearm or firearms pursuant to section 400.00 of the penal law and ineligibility for such a license; order to surrender firearms.

1. Suspension of firearms license and ineligibility for such a license upon the issuance of a temporary order of protection. Whenever a temporary order of protection is issued pursuant to section eight hundred twenty-eight of this article, or pursuant to article four, five, six, seven or ten of this act: (a) the court shall suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, or any or all firearms, rifles and shotguns owned or possessed where the court receives information that gives the court good cause to believe that: (i) the respondent has a prior conviction of any violent felony offense as defined in section 70.02 of the penal law; (ii) the respondent has previously been found to have willfully failed to obey a prior order of protection and such willful failure involved (A) the infliction of serious injury, as defined in subdivision ten of section 10.00 of the penal law, (B) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (C) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iii) the respondent has a prior conviction for stalking in the first degree as defined in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law; and (b) the court may where the court finds a substantial risk that the respondent may use or threaten to use a firearm unlawfully against the person or persons for whose protection the temporary order of protection is issued, suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender of any or all firearms owned or possessed.

2. Revocation or suspension of firearms license and ineligibility for such a license upon the issuance of an order of protection.

Whenever an order of protection is issued pursuant to section eight hundred forty-one of this part, or

pursuant to article four, five, six, seven or ten of this act:

(a) the court shall revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms, rifles and shotguns owned or possessed where the court finds that the conduct which resulted in the issuance of the order of protection involved (i) the infliction of serious physical injury, as defined in subdivision ten of section 10.00 of the penal law, (ii) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; and

(b) the court shall, where the court finds a substantial risk that the respondent may use or threaten to use a firearm, rifle or shotgun unlawfully against the person or persons for whose protection the order of protection is issued, (i) revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license and order the immediate surrender pursuant to paragraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms, rifles and shotguns owned or possessed or (ii) suspend or continue to suspend any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender pursuant to subparagraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms, rifles and shotguns owned or possessed.

3. Revocation or suspension of firearms license and ineligibility for such a license upon finding a willful failure to obey an order of protection or temporary order of protection. Whenever a respondent has been found, pursuant to section eight hundred forty-six-a of this part to have willfully failed to obey an order of protection issued by this court or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, in addition to any other remedies available pursuant to section eight hundred forty- six-a of this part:

(a) the court shall revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, and order the immediate surrender pursuant to paragraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms, rifles and shotguns owned or possessed where the willful failure to obey such order involves (i) the infliction of serious physical injury, as defined in subdivision nine of section 10.00 of the penal law, (ii) the use or threatened use of a deadly weapon or dangerous instrument as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, or (iii) behavior constituting any violent felony offense as defined in section 70.02 of the penal law; or (iv) behavior constituting stalking in the first degree as defined in section 120.60 of the penal law, stalking in the second degree as defined in section 120.55 of the penal law, stalking in the third degree as defined in section 120.50 of the penal law or stalking in the fourth degree as defined in section 120.45 of such law; and

(b) the court shall where the court finds a substantial risk that the respondent may use or threaten to use a firearm, rifle or shotgun unlawfully against the person or persons for whose protection the order of protection was issued, (i) revoke any such existing license possessed by the respondent, order the respondent ineligible for such a license, whether or not the respondent possesses such a license, and order the immediate surrender pursuant to paragraph (f) of paragraph one of subdivision a of section 265.20 and subdivision six of section 400.05 of the penal law, of any or all firearms, rifles and shotguns owned or possessed or (ii) suspend any such existing license possessed by the respondent, order the

respondent ineligible for such a license, and order the immediate surrender of any or all firearms, rifles and shotguns owned or possessed.

4. Suspension. Any suspension order issued pursuant to this section shall remain in effect for the duration of the temporary order of protection or order of protection, unless modified or vacated by the court.

5. Surrender.

(a) Where an order to surrender one or more firearms, rifles or shotguns has been issued, the temporary order of protection or order of protection shall specify the place where such weapons shall be surrendered, shall specify a date and time by which the surrender shall be completed and, to the extent possible, shall describe such weapons to be surrendered and shall direct the authority receiving such surrendered firearms to immediately notify the court of such surrender.

(b) The prompt surrender of one or more firearms, rifles or shotguns pursuant to a court order issued pursuant to this section shall be considered a voluntary surrender for purposes of subparagraph (f) of paragraph one of subdivision a of section 265.20 of the penal law. The disposition of any such firearms shall be in accordance with the provisions of subdivision six of section 400.05 of the penal law; provided, however that upon the termination of any suspension order issued pursuant to this section, any court of record exercising criminal jurisdiction may order the return of a firearm, rifle or shotgun pursuant to paragraph b of subdivision five of section 530.14 of the criminal procedure law.

(c) The provisions of this section shall not be deemed to limit, restrict or otherwise impair the authority of the court to order and direct the surrender of any or all pistols, revolvers, rifles, shotguns or other firearms owned or possessed by a respondent pursuant to this act.

6. Notice.

(a) Where an order requiring surrender, revocation, suspension or ineligibility has been issued pursuant to this section, any temporary order of protection or order of protection issued shall state that such firearm license has been suspended or revoked or that the respondent is ineligible for such license, as the case may be, and that the defendant is prohibited from possessing any firearms, rifles or shotguns.

(b) The court revoking or suspending the license, ordering the respondent ineligible for such license, or ordering the surrender of any firearm, rifles or shotguns shall immediately notify the statewide registry of orders of protection and the duly constituted police authorities of the locality of such action.

(c) The court revoking or suspending the license or ordering the defendant ineligible for such license shall give written notice thereof without unnecessary delay to the division of state police at its office in the city of Albany.

(d) Where an order of revocation, suspension, ineligibility, or surrender is modified or vacated, the court shall immediately notify the statewide registry of orders of protection and the duly constituted police authorities of the locality concerning such action and shall give written notice thereof without unnecessary delay to the division of state police at its office in the city of Albany.

7. Hearing. The respondent shall have the right to a hearing before the court regarding any revocation, suspension, ineligibility or surrender order issued pursuant to this section, provided that nothing in this subdivision shall preclude the court from issuing any such order prior to a hearing. Where the court has issued such an order prior to a hearing, it shall commence such hearing within fourteen days of the date such order was issued.

8. Nothing in this section shall delay or otherwise interfere with the issuance of a temporary order of protection.

Sec. 843. Rules of court.

Rules of court shall define permissible terms and conditions of any order issued under section eight hundred forty-one, paragraphs (b), (c) and (d).

Sec. 844. Reconsideration and modification.

For good cause shown, the family court may after hearing reconsider and modify any order issued under paragraphs (b), (c) and (d) of section eight hundred forty-one.

Sec. 846. Petition; violation of court order.

Proceedings under this part shall be originated by the filing of a petition containing an allegation that the respondent has failed to obey a lawful order of this court or an order of protection issued by a court of competent jurisdiction of another state, territorial or tribal jurisdiction.

(a) Persons who may originate proceedings. The original petitioner, or any person who may originate proceedings under section eight hundred twenty-two of this article, may originate a proceeding under this part.

(a-1) The protected party in whose favor the order of protection or temporary order of protection is issued may not be held to violate an order issued in his or her favor nor may such protected party be arrested for violating such order.

(b) Issuance of summons.

(i) Upon the filing of a petition under this part, the court may cause a copy of the petition and summons to be issued requiring the respondent to show cause why respondent should not be dealt with in accordance with section eight hundred forty-six-a of this part. The summons shall include on its face, printed or typewritten in a size equal to at least eight-point bold type, a notice warning the respondent that a failure to appear in court may result in immediate arrest, and that, after an appearance in court, a finding that the respondent willfully failed to obey the order may result in commitment to jail for a term not to exceed six months, for contempt of court. The notice shall also advise the respondent of the right to counsel, and the right to assigned counsel, if indigent.

(ii) Upon the filing of a petition under this part alleging a violation of a lawful order of this or any other court, as provided in this section, the court may, on its own motion, or on motion of the petitioner:

(A) hear the violation petition and take such action as is authorized under this article; or

(B) retain jurisdiction to hear and determine whether such violation constitutes contempt of court, and transfer the allegations of criminal conduct constituting such violation to the district attorney for prosecution pursuant to section eight hundred thirteen of this article; or

(C) transfer the entire proceeding to the criminal court pursuant to section eight hundred thirteen of this article.

(c) Service of summons. Upon issuance of a summons, the provisions of section eight hundred twenty-six of this article shall apply, except that no order of commitment may be entered upon default in appearance by the respondent if service has been made pursuant to subdivision (b) of such section.

(d) Issuance of warrant. The court may issue a warrant, directing that the respondent be arrested and brought before the court, pursuant to section eight hundred twenty-seven of this article.

Sec. 846-a. Powers on failure to obey order.

If a respondent is brought before the court for failure to obey any lawful order issued under this article or an order of protection issued by a court of competent jurisdiction of another state, territorial or tribal

jurisdiction in a proceeding and if, after hearing, the court is satisfied by competent proof that the respondent has willfully failed to obey any such order, the court may modify an existing order to add reasonable conditions of behavior to the existing order of protection, make a new order of protection in accordance with section eight hundred forty- two, may order the forfeiture of bail in a manner consistent with article five hundred forty of the criminal procedure law if bail has been ordered pursuant to this act, may order the respondent to pay the petitioner's reasonable and necessary counsel fees in connection with the violation petition where the court finds that the violation of its order was willful, and may commit the respondent to jail for a term not to exceed six months. Such commitment may be served upon certain specified days or parts of days as the court may direct, and the court may, at any time within the term of such sentence, revoke such suspension and commit the respondent for the remainder of the original sentence, or suspend the remainder of such sentence. If the court determines that the willful failure to obey such order involves violent behavior constituting the crimes of menacing, reckless endangerment, assault or attempted assault and if such a respondent is licensed to carry, possess, repair and dispose of firearms pursuant to section 400.00 of the penal law, the court may also immediately revoke such license and may arrange for the immediate surrender and disposal of any firearm such respondent owns or possesses. If the willful failure to obey such order involves the infliction of serious physical injury as defined in subdivision ten of section 10.00 of the penal law or the use or threatened use of a deadly weapon or dangerous instrument, as those terms are defined in subdivisions twelve and thirteen of section 10.00 of the penal law, such revocation and immediate surrender and disposal of any firearm owned or possessed by respondent shall be mandatory, pursuant to subdivision eleven of section 400.00 of the penal law.

Sec. 847. Procedures for violation of orders of protection; certain cases.

An assault, attempted assault or other family offense as defined in section eight hundred twelve of this article which occurs subsequent to the issuance of an order of protection under this article shall be deemed a new offense for which the petitioner may file a petition alleging a violation of an order of protection or file a new petition alleging a new family offense and may seek to have an accusatory instrument filed in a criminal court, as authorized by section one hundred fifteen of this act.

B. PENAL LAW

Under Article 8, §812 of the Family Court Act, the Family Court has jurisdiction over the following offenses, as defined by New York State Penal Law:

Disorderly Conduct
Harassment (in the first degree or second degree)
Aggravated Harassment (in the second degree)
Menacing (in the second degree or third degree)
Reckless endangerment
Assault (in the second degree or third degree)
Attempted assault
Stalking (in the first degree, second degree, third degree, or fourth degree)
Criminal Mischief
Sexual Misconduct Forcible touching
Sexual abuse (in the second degree or third degree)
Criminal Obstruction of breathing or blood circulation
Strangulation (in the first degree or second degree)
Identity Theft (in the first degree, second degree, or third degree)
Grand Larceny (in the third degree or fourth degree)
Coercion (in the second degree or third degree)
Unlawful dissemination or publication of an intimate image

§240.20 Disorderly Conduct

A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:

1. He engages in fighting or in violent, tumultuous or threatening behavior; or
2. He makes unreasonable noise; or
3. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or
4. Without lawful authority, he disturbs any lawful assembly or meeting persons; or
5. He obstructs vehicular or pedestrian traffic; or
6. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or
7. He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose.

Disorderly conduct is a violation.

§240.25 Harassment in the first degree

A person is guilty of harassment in the first degree when he or she intentionally and repeatedly harasses another person by following such person in or about a public place or places or by engaging in a course of conduct or by repeatedly committing acts which places such person in a reasonable fear of physical injury. This section shall not apply to activities regulated by the national labor relations act, as amended, the railway labor act, as amended, or the federal employment labor management act, as amended. Harassment in the first degree is a class B misdemeanor.

§240.26 Harassment in the second degree

A person is guilty of harassment in the second degree when, with intent to harass, annoy or alarm

another person:

1. He or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same; or
2. He or she follows a person in or about a public place or places; or
3. He or she engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose,

Subdivisions two and three of this section shall not apply to activities regulated by the national labor relations act, as amended, the railway labor act, as amended, or the federal employment labor management act, as amended.

Harassment in the second degree is a violation.

§240.30 Aggravated harassment in the second degree

A person is guilty of aggravated harassment in the second degree when:

1. With intent to harass another person, the actor either:
 - (a) communicates, anonymously or otherwise, by telephone, by computer or any other electronic means, or by mail, or by transmitting or delivering any other form of communication, a threat to cause physical harm to, or unlawful harm to the property of, such person, or a member of such person's same family or household as defined in subdivision one of section 530.11 of the criminal procedure law, and the actor knows or reasonably should know that such communication will cause such person to reasonably fear harm to such person's physical safety or property, or to the physical safety or property of a member of such person's same family or household; or
 - (b) causes a communication to be initiated anonymously or otherwise, by telephone, by computer or any other electronic means, or by mail, or by transmitting or delivering any other form of communication, a threat to cause physical harm to, or unlawful harm to the property of, such person, a member of such person's same family or household as defined in subdivision one of section 530.11 of the criminal procedure law, and the actor knows or reasonably should know that such communication will cause such person to reasonably fear harm to such person's physical safety or property, or to the physical safety or property of a member of such person's same family or household; or
2. With intent to harass or threaten another person, he or she makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication; or
3. With the intent to harass, annoy, threaten or alarm another person, he or she strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, gender identity or expression, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct; or
4. With the intent to harass, annoy, threaten or alarm another person, he or she strikes, shoves, kicks or otherwise subjects another person to physical contact thereby causing physical injury to such person or to a family or household member of such person as defined in section 530.11 of the criminal procedure law; or
5. He or she commits the crime of harassment in the first degree and has previously been convicted of the crime of harassment in the first degree as defined by section 240.25 of this article within the preceding ten years.

Aggravated harassment in the second degree is a class A misdemeanor.

§120.00 Assault in the third degree

A person is guilty of assault in the third degree when:

1. With intent to cause physical injury to another person, he causes such injury to such person or to a third person; or
2. He recklessly causes physical injury to another person; or
3. With criminal negligence, he causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

Assault in the third degree is a class A misdemeanor.

§120.05 Assault in the second degree

A person is guilty of assault in the second degree when:

1. With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person; or
2. With intent to cause physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or
3. With intent to prevent a peace officer, police officer, prosecutor as defined in subdivision thirty-one of section 1.20 of the criminal procedure law, registered nurse, licensed practical nurse, sanitation enforcement agent, a firefighter, including a firefighter acting as a paramedic or emergency medical technician administering first aid in the course of performance of duty as such firefighter, an emergency medical service paramedic or emergency medical service technician, or medical or related personnel in a hospital emergency department, a city marshal, a traffic enforcement officer or traffic enforcement agent, from performing a lawful duty, by means including releasing or failing to control an animal under circumstances evincing the actor's intent that the animal obstruct the lawful activity of such peace officer, police officer, registered nurse, licensed practical nurse, sanitation enforcement agent, firefighter, paramedic, technician, city marshal, a school crossing guard appointed pursuant to section two hundred eight-a of the general municipal law, a traffic enforcement officer or traffic enforcement agent, he or she causes physical injury to such peace officer, police officer, prosecutor as defined in subsection thirty-one of section 1.20 of the criminal procedure law, registered nurse, licensed practical nurse, sanitation enforcement agent, firefighter, paramedic, technician or medical or related personnel in a hospital emergency department, city marshal, school crossing guard appointed pursuant to section two hundred eight-a of the general municipal law, traffic enforcement officer or traffic enforcement agent or employee of an entity governed by the public service law; or
- 3-a. With intent to prevent an employee of a local social services district directly involved in investigation of or response to alleged abuse or neglect of a child, a vulnerable elderly person or an incompetent or physically disabled person, from performing such investigation or response, the actor, not being such child, vulnerable elderly person or incompetent or physically disabled person, or with intent to prevent an employee of a local social services district directly involved in providing public assistance and care from performing his or her job, causes physical injury to such employee including by means of releasing or failing to control an animal under circumstances evincing the actor's intent that the animal obstruct the lawful activities of such employee; or
- 3-b. With intent to prevent an employee of the New York city housing authority from performing his or her lawful duties while located on housing project grounds, real property, or a building owned, managed, or operated by such authority he or she causes physical injury to such employee; or
- 3-c. With intent to prevent an employee providing direct patient care, who is not a nurse pursuant to title eight of the education law, whose principal employment responsibility is to carry out direct patient care for one or more patients in any hospital, nursing home, residential health care facility, general hospital, government agency including any chronic disease hospital, maternity hospital, outpatient department, emergency center or surgical center under article twenty-eight of the public health law, from performing

a lawful duty, he or she causes physical injury to such employee providing direct patient care; or

4. He recklessly causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or

4-a. He recklessly causes physical injury to another person who is a child under the age of eighteen by intentional discharge of a firearm, rifle or shotgun; or

5. For a purpose other than lawful medical or therapeutic treatment, he intentionally causes stupor, unconsciousness or other physical impairment or injury to another person by administering to him, without his consent, a drug, substance or preparation capable of producing the same; or

6. In the course of and in furtherance of the commission or attempted commission of a felony, other than a felony defined in article one hundred thirty which requires corroboration for conviction, or of immediate flight therefrom, he, or another participant if there be any, causes physical injury to a person other than one of the participants; or

7. Having been charged with or convicted of a crime and while confined in a correctional facility, as defined in subdivision three of section forty of the correction law, pursuant to such charge or conviction, with intent to cause physical injury to another person, he causes such injury to such person or to a third person; or

8. Being eighteen years old or more and with intent to cause physical injury to a person less than eleven years old, the defendant recklessly causes serious physical injury to such person; or

9. Being eighteen years old or more and with intent to cause physical injury to a person less than seven years old, the defendant causes such injury to such person; or

10. Acting at a place the person knows, or reasonably should know, is on school grounds and with intent to cause physical injury, he or she: (a) causes such injury to an employee of a school or public school district; or (b) not being a student of such school or public school district, causes physical injury to another, and such other person is a student of such school who is attending or present for educational purposes. For purposes of this subdivision the term "school grounds" shall have the meaning set forth in subdivision fourteen of section 220.00 of this chapter; or

11. With intent to cause physical injury to a train operator, ticket inspector, conductor, signalperson, bus operator, station agent, station cleaner or terminal cleaner employed by any transit agency, authority or company, public or private, whose operation is authorized by New York state or any of its political subdivisions, a city marshal, a school crossing guard appointed pursuant to section two hundred eight-a of the general municipal law, a traffic enforcement officer, traffic enforcement agent, prosecutor as defined in subdivision thirty-one of section 1.20 of the criminal procedure law, sanitation enforcement agent, New York City sanitation worker, public health sanitarian, New York city public health sanitarian, registered nurse, licensed practical nurse, emergency medical service paramedic, or emergency medical service technician, he or she causes physical injury to such train operator, ticket inspector, conductor, signalperson, bus operator, station agent, station cleaner or terminal cleaner, city marshal, school crossing guard appointed pursuant to section two hundred eight-a of the general municipal law, traffic enforcement officer, traffic enforcement agent, prosecutor as defined in subdivision thirty-one of section 1.20 of the criminal procedure law, registered nurse, licensed practical nurse, public health sanitarian, New York city public health sanitarian, sanitation enforcement agent, New York city sanitation worker, emergency medical service paramedic, or emergency medical service technician, while such employee is performing an assigned duty on, or directly related to, the operation of a train or bus, including the cleaning of a train or bus station or terminal, or such city marshal, school crossing guard, traffic enforcement officer, traffic enforcement agent, prosecutor as defined in subdivision thirty-one of section 1.20 of the criminal procedure law, registered nurse, licensed practical nurse, public health sanitarian, New York city public health sanitarian, sanitation enforcement agent,

New York city sanitation worker, emergency medical service paramedic, or emergency medical service technician is performing an assigned duty; or

11-a. With intent to cause physical injury to an employee of a local social services district directly involved in investigation of or response to alleged abuse or neglect of a child, vulnerable elderly person or an incompetent or physically disabled person, the actor, not being such child, vulnerable elderly person or incompetent or physically disabled person, or with intent to prevent an employee of a local social services district directly involved in providing public assistance and care from performing his or her job, causes physical injury to such employee; or

11-b. With intent to cause physical injury to an employee of the New York city housing authority performing his or her lawful duties while located on housing project grounds, real property, or a building owned, managed, or operated by such authority he or she causes physical injury to such employee; or

11-c. With intent to cause physical injury to an employee providing direct patient care, who is not a nurse pursuant to title eight of the education law, whose principal employment responsibility is to carry out direct patient care for one or more patients in any hospital, nursing home, residential health care facility, general hospital, government agency including any chronic disease hospital, maternity hospital, outpatient department, emergency center or surgical center under article twenty- eight of the public health law, he or she causes physical injury to such employee providing direct patient care while such employee is performing a lawful duty; or

12. With intent to cause physical injury to a person who is sixty-five years of age or older, he or she causes such injury to such person, and the actor is more than ten years younger than such person; or

13. Being confined to a secure treatment facility, as such term is defined in subdivision (o) of section 10.03 of the mental hygiene law, and with intent to cause physical injury to an employee of such secure treatment facility performing his or her duties, he or she causes such injury to such person; or

14. With intent to prevent or obstruct a process server, as defined in section eighty-nine- t of the general business law, from performing a lawful duty pursuant to article three of the civil practice law and rules, or intentionally, as retaliation against such a process server for the performance of the process server's duties pursuant to such article, including by means of releasing or failing to control an animal evincing the actor's intent that the animal prevent or obstruct the lawful duty of the process server or as retaliation against the process server, he or she causes physical injury to such process server.

Assault in the second degree is a class D felony.

§ 110.00. Attempt to commit a crime *(applicable only to Assault, in relation to Attempted Assault)*

A person is guilty of an attempt to commit a crime when, with intent to commit a crime, he engages in conduct which tends to effect the commission of such crime.

§120.14 Menacing in the second degree

A person is guilty of menacing in the second degree when:

1. He or she intentionally places or attempts to place another person in reasonable fear of physical injury, serious physical injury or death by displaying a deadly weapon, dangerous instrument or what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or

2. He or she repeatedly follows a person or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place another person in reasonable fear of physical injury, serious physical injury or death; or

3. He or she commits the crime of menacing in the third degree in violation of that part of a duly served order of protection, or such order which the defendant has actual knowledge of because he or she was present in court when such order was issued, pursuant to article eight of the family court act, section

530.12 of the criminal procedure law, or an order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, which directed the respondent or defendant to stay away from the person or persons on whose behalf the order was issued.

Menacing in the second degree is a class A misdemeanor.

§120.15 Menacing in the third degree

A person is guilty of menacing in the third degree when, by physical menace, he or she intentionally places or attempts to place another person in fear of death, imminent serious physical injury or physical injury.

Menacing in the third degree is a class B misdemeanor.

§120.20 Reckless endangerment in the second degree

A person is guilty of reckless endangerment in the second degree when he recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

Reckless endangerment in the second degree is a class A misdemeanor.

§120.25 Reckless endangerment in the first degree

A person is guilty of reckless endangerment in the first degree when, under circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person.

Reckless endangerment in the first degree is a class D felony

§120.45 Stalking in the fourth degree

A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

1. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or
2. causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or
3. is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

For the purposes of subdivision two of this section, "following" shall include the unauthorized tracking of such person's movements or location through the use of a global positioning system or other device

Stalking in the fourth degree is a class B misdemeanor.

§120.50 Stalking in the third degree

A person is guilty of stalking in the third degree when he or she:

1. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against three or more persons, in three or more separate transactions, for which the actor has not been previously convicted; or

2. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime, as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
 3. With intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or
 4. Commits the crime of stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree.
- Stalking in the third degree is a class A misdemeanor.

§120.55 Stalking in the second degree

A person is guilty of stalking in the second degree when he or she:

1. Commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 of this article and in the course of and in furtherance of the commission of such offense: (i) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, shotgun, machine gun, electronic dart gun, electronic stun gun, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, slingshot, slungshot, shirken, "Kung Fu Star", dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument or deadly weapon; or (ii) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
2. Commits the crime of stalking in the third degree in violation of subdivision three of section 120.50 of this article against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
3. Commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree as defined in subdivision four of section 120.50 of this article against any person; or
4. Being twenty-one years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury or death; or
5. Commits the crime of stalking in the third degree, as defined in subdivision three of section 120.50 of this article, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted.

Stalking in the second degree is a class E felony.

§120.60 Stalking in the first degree

A person is guilty of stalking in the first degree when he or she commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 or stalking in the second degree as defined in section 120.55 of this article and, in the course and furtherance thereof, he or she:

1. intentionally or recklessly causes physical injury to the victim of such crime; or
2. commits a class A misdemeanor defined in article one hundred thirty of this chapter, or a class E felony defined in section 130.25, 130.40 or 130.85 of this chapter, or a class D felony defined in section 130.30 or 130.45 of this chapter.

Stalking in the first degree is a class D felony.

§145.00 Criminal Mischief in the Fourth Degree

A person is guilty of criminal mischief in the fourth degree when, having no right to do so nor any reasonable ground to believe that he or she has such right, he or she:

1. Intentionally damages property of another person; or
2. Intentionally participates in the destruction of an abandoned building as defined in section one thousand nine hundred seventy-one-a of the real property actions and proceedings law; or
3. Recklessly damages property of another person in an amount exceeding two hundred fifty dollars; or
4. With intent to prevent a person from communicating a request for emergency assistance, intentionally disables or removes telephonic, TTY or similar communication sending equipment while that person: (a) is attempting to seek or is engaged in the process of seeking emergency assistance from police, law enforcement, fire or emergency medical services personnel; or (b) is attempting to seek or is engaged in the process of seeking emergency assistance from another person or entity in order to protect himself, herself or a third person from imminent physical injury. The fact that the defendant has an ownership interest in such equipment shall not be a defense to a charge pursuant to this subdivision.

Criminal mischief in the fourth degree is a class A misdemeanor.

§130.20 Sexual Misconduct

A person is guilty of sexual misconduct when:

1. He or she engages in sexual intercourse with another person without such person's consent; or
2. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent; or
3. He or she engages in sexual conduct with an animal or a dead human body.

Sexual misconduct is a class A misdemeanor.

§130.52 Forcible touching

A person is guilty of forcible touching when such person intentionally, and for no legitimate purpose:

1. forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person, or for the purpose of gratifying the actor's sexual desire; or

For the purposes of this section, forcible touching includes squeezing, grabbing or pinching.

Forcible touching is a class A misdemeanor.

§130.55 Sexual abuse in the third degree

A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person.

Sexual abuse in the third degree is a class B misdemeanor.

§130.60 Sexual abuse in the second degree

A person is guilty of sexual abuse in the second degree when he or she subjects another person to sexual contact and when such other person is:

1. Incapable of consent by reason of some factor other than being less than seventeen years old; or
2. Less than fourteen years old.

Sexual abuse in the second degree is a class A misdemeanor.

§121.11 Criminal obstruction of breathing or blood circulation

A person is guilty of criminal obstruction of breathing or blood circulation when, with intent to impede the normal breathing or circulation of the blood of another person, he or she:

- a. applies pressure on the throat or neck of such person; or
- b. blocks the nose or mouth of such a person.

Criminal obstruction of breathing or blood circulation is a class A misdemeanor.

§121.12 Strangulation in the second degree

A person is guilty of strangulation in the second degree when he or she commits the crime of criminal obstruction of breathing or blood circulation, as defined in section 121.11 of this article, and thereby causes stupor, loss of consciousness for any period of time, or any other physical injury or impairment. Strangulation in the second degree is a class D felony.

§121.13 Strangulation in the first degree

A person is guilty of strangulation in the first degree when he or she commits the crime of criminal obstruction of breathing or blood circulation, as defined in section 121.11 of this article, and thereby causes serious physical injury to such other person.

Strangulation in the first degree is a class C felony.

§ 190.78 Identity theft in the third degree

A person is guilty of identity theft in the third degree when he or she knowingly and with intent to defraud assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby:

1. obtains goods, money, property or services or uses credit in the name of such other person or causes financial loss to such person or to another person or persons; or
2. commits a class A misdemeanor or higher-level crime.

Identity theft in the third degree is a class A misdemeanor.

§ 190.79 Identity theft in the second degree

A person is guilty of identity theft in the second degree when he or she knowingly and with intent to defraud assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby:

1. obtains goods, money, property or services or uses credit in the name of such other person in an aggregate amount that exceeds five hundred dollars; or
2. causes financial loss to such person or to another person or persons in an aggregate amount that exceeds five hundred dollars; or
3. commits or attempts to commit a felony or acts as an accessory to the commission of a felony; or
4. commits the crime of identity theft in the third degree as defined in section 190.78 of this article and has been previously convicted within the last five years of identity theft in the third degree as defined in section 190.78, identity theft in the second degree as defined in this section, identity theft in the first degree as defined in section 190.80, unlawful possession of personal identification information in the third degree as defined in section 190.81, unlawful possession of personal identification information in the second degree as defined in section 190.82, unlawful possession of personal identification information in the first degree as defined in section 190.83, unlawful possession of a skimmer device in the second degree as defined in section 190.85, unlawful possession of a skimmer device in the first

degree as defined in section 190.86, grand larceny in the fourth degree as defined in section 155.30, grand larceny in the third degree as defined in section 155.35, grand larceny in the second degree as defined in section 155.40 or grand larceny in the first degree as defined in section 155.42 of this chapter. Identity theft in the second degree is a class E felony.

§ 190.80 Identity theft in the first degree

A person is guilty of identity theft in the first degree when he or she knowingly and with intent to defraud assumes the identity of another person by presenting himself or herself as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby:

1. obtains goods, money, property or services or uses credit in the name of such other person in an aggregate amount that exceeds two thousand dollars; or
2. causes financial loss to such person or to another person or persons in an aggregate amount that exceeds two thousand dollars; or
3. commits or attempts to commit a class D felony or higher-level crime or acts as an accessory in the commission of a class D or higher-level felony; or
4. commits the crime of identity theft in the second degree as defined in section 190.79 of this article and has been previously convicted within the last five years of identity theft in the third degree as defined in section 190.78, identity theft in the second degree as defined in section 190.79, identity theft in the first degree as defined in this section, unlawful possession of personal identification information in the third degree as defined in section 190.81, unlawful possession of personal identification information in the second degree as defined in section 190.82, unlawful possession of personal identification information in the first degree as defined in section 190.83, unlawful possession of a skimmer device in the second degree as defined in section 190.85, unlawful possession of a skimmer device in the first degree as defined in section 190.86, grand larceny in the fourth degree as defined in section 155.30, grand larceny in the third degree as defined in section 155.35, grand larceny in the second degree as defined in section 155.40 or grand larceny in the first degree as defined in section 155.42 of this chapter.

Identity theft in the first degree is a class D felony.

§ 155.30 Grand Larceny in the fourth degree

A person is guilty of grand larceny in the fourth degree when he steals property and when:

1. The value of the property exceeds one thousand dollars; or
2. The property consists of a public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant; or
3. The property consists of secret scientific material; or
4. The property consists of a credit card or debit card; or
5. The property, regardless of its nature and value, is taken from the person of another; or
6. The property, regardless of its nature and value, is obtained by extortion; or
7. The property consists of one or more firearms, rifles or shotguns, as such terms are defined in section 265.00 of this chapter; or
8. The value of the property exceeds one hundred dollars and the property consists of a motor vehicle, as defined in section one hundred twenty-five of the vehicle and traffic law, other than a motorcycle, as defined in section one hundred twenty-three of such law; or
9. The property consists of a scroll, religious vestment, a vessel, an item comprising a display of religious symbols which forms a representative expression of faith, or other miscellaneous item of

property which: (a) has a value of at least one hundred dollars; and (b) is kept for or used in connection with religious worship in any building, structure or upon the curtilage of such building or structure used as a place of religious worship by a religious corporation, as incorporated under the religious corporations law or the education law.

10. The property consists of an access device which the person intends to use unlawfully to obtain telephone service.

11. The property consists of anhydrous ammonia or liquified ammonia gas and the actor intends to use, or knows another person intends to use, such anhydrous ammonia or liquified ammonia gas to manufacture methamphetamine.

Grand larceny in the fourth degree is a class E felony.

§ 155.35 Grand larceny in the third degree

A person is guilty of grand larceny in the third degree when he or she steals property and:

1. when the value of the property exceeds three thousand dollars, or
2. the property is an automated teller machine or the contents of an automated teller machine.

Grand larceny in the third degree is a class D felony.

§ 135.60. Coercion in the third degree

A person is guilty of coercion in the third degree when he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he or she has a legal right to engage, or compels or induces a person to join a group, organization or criminal enterprise which such latter person has a right to abstain from joining, by means of instilling in him or her a fear that, if the demand is not complied with, the actor or another will:

1. Cause physical injury to a person; or
2. Cause damage to property; or
3. Engage in other conduct constituting a crime; or
4. Accuse some person of a crime or cause criminal charges to be instituted against him or her; or
5. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
6. Cause a strike, boycott or other collective labor group action injurious to some person's business; except that such a threat shall not be deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act; or
7. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
8. Use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
9. Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his or her health, safety, business, calling, career, financial condition, reputation or personal relationships.

Coercion in the third degree is a class A misdemeanor.

§ 135.61. Coercion in the second degree

A person is guilty of coercion in the second degree when he or she commits the crime of coercion in the third degree as defined in section 135.60 of this article and thereby compels or induces a person to engage in sexual intercourse, oral sexual conduct or anal sexual conduct as such terms are defined in

section 130 of the penal law.
Coercion in the second degree is a class E felony.

§ 245.15 Unlawful dissemination or publication of an intimate image

A person is guilty of unlawful dissemination or publication of an intimate image when:

(a) with intent to cause harm to the emotional, financial or physical welfare of another person, he or she intentionally disseminates or publishes a still or video image of such other person, who is identifiable from the still or video image itself or from information displayed in connection with the still or video image, without such other person's consent, which depicts:

(i) an unclothed or exposed intimate part of such other person; or

(ii) such other person engaging in sexual conduct as defined in subdivision ten of section 130.00 of this chapter with another person; and

(b) such still or video image was taken under circumstances when the person depicted had a reasonable expectation that the image would remain private and the actor knew or reasonably should have known the person depicted intended for the still or video image to remain private, regardless of whether the actor was present when the still or video image was taken.

For purposes of this section "intimate part" means the naked genitals, pubic area, anus or female nipple of the person.

For purposes of this section "disseminate" and "publish" shall have the same meaning as defined in section 250.40 of this title.

This section shall not apply to the following:

(a) the reporting of unlawful conduct;

(b) dissemination or publication of an intimate image made during lawful and common practices of law enforcement, legal proceedings or medical treatment;

(c) images involving voluntary exposure in a public or commercial setting; or

(d) dissemination or publication of an intimate image made for a legitimate public purpose.

14. Nothing in this section shall be construed to limit, or to enlarge, the protections that 47 U.S.C. Section 230 confers on an interactive computer service for content provided by another information content provider, as such terms are defined in 47 U.S.C. Section 230.

Unlawful dissemination or publication of an intimate image is a class A misdemeanor.

§ 10.00 Definitions of terms of general use

1. Physical injury: means impairment of physical condition or substantial pain.

2. Serious physical injury: means physical injury which creates a substantial risk of death, or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

3. Dangerous instrument: means any instrument, article or substance, including a "vehicle" as that term is defined in this section which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or other serious physical injury.

4. Violation: means an offense, other than a "traffic infraction," for which a sentence to a term of imprisonment in excess of fifteen days cannot be imposed.

5. Misdemeanor: means an offense, other than a "traffic infraction," for which a sentence to a term of imprisonment in excess of fifteen days may be imposed, but for which a sentence to a term of imprisonment in excess of one year cannot be imposed.

6. Felony: means an offense for which a sentence to a term of imprisonment in excess of one year can be

imposed.

§ 130.00. Sex offenses: definitions of terms

1. Sexual intercourse: has its ordinary meaning and occurs upon any penetration, however slight.
2. Oral sexual conduct: means conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina.
3. Anal sexual conduct: means conduct between persons consisting of contact between the penis and anus.
4. Sexual contact: means any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.

C. FAMILY OFFENSE PETITION TEMPLATE

F.C.A. 812, 818, 821

Form 8-2
(Family Offense Petition)

FAMILY COURT: STATE OF NEW YORK
COUNTY OF *Insert County*

.....X
X (DOB ??/??/????),

Petitioner,

-against-

Y (DOB ??/??/????),

Respondent.

.....X
TO THE FAMILY COURT:

The undersigned Petitioner, respectfully shows that:

- Petitioner, **X**, resides at **X location** OR a confidential address.
- Respondent, **Y**, resides at **Y location** OR unknown address.
- (Upon information and belief), the Res**who is married to/who has a child in common with/who is in an intimate relationship with** the Petitioner committed an act or acts, which constitute: **LEAVE ALL OF THE FOLLOWING OPTIONS IN** (disorderly conduct) (aggravated harassment in the second degree) (harassment in the first degree) (harassment in the second degree) (menacing in the second degree) (menacing in the third degree) (reckless endangerment) (assault in the second degree) (assault in the third degree) (attempted assault) (stalking in the first degree) (stalking in the second degree) (stalking in the third degree) (stalking in the fourth degree) (criminal mischief) (sexual misconduct) (forcible touching) (sexual abuse in the third degree) (sexual abuse in the second degree) (criminal obstruction of breathing or blood circulation) (strangulation in the second degree) (strangulation in the first degree) (identity theft in the third degree) (identity theft in the second degree) (identity theft in the first degree) (grand larceny in the fourth degree) (grand larceny in the third degree) (coercion in the second degree) (coercion in the third degree) (unlawful dissemination or publication of an intimate image) toward Petitioner, in that:

(Delete italic text from final draft)

In reverse chronological order:

(a) Most Recent Incident (Begin all paragraphs with: “On or about X date, at this location, Respondent ...)

(b) Worst Incident that is relatively recent (try to keep incidents relatively recent in time – 2019, 2018, 2017, 2016).

(a) Another serious incident relatively recently in time.

(b) Catch-all paragraph (when the first incident took place and general description of the historical nature of the domestic violence)

1. The following are the names and ages and relationships to the petitioner and respondent of each and every child in the household:

<u>Name</u>	<u>Date of Birth</u>	<u>Relationship to Petitioner/Respondent</u>
-------------	----------------------	--

2. The following aggravating circumstances, if any, are present in this case
[Aggravating circumstances shall mean physical injury or serious physical injury to the petitioner caused by the respondent, the use of a dangerous instrument against petitioner by the respondent, a history of repeated violations of orders of protection by the respondent, prior convictions for crimes against the petitioner by the respondent or the exposure of any family or household member to physical injury by the respondent and like incidents, behavior and occurrences which constitute an immediate and ongoing danger to the petitioner or any member of the petitioner’s family or household]:
3. Upon information and belief, the following criminal, matrimonial or Family Court proceedings involving the respondent have been filed:
4. Indicate whether a previous application has been made to any court or judge for the relief requested herein and, if so, the relief, if any, granted and the date of such relief:
5. (Upon information and belief) respondent is licensed or has a license application pending to carry, possess, repair, sell or otherwise dispose of the following firearms [if known, specify type of firearms, type of license(s), date of issuance of license(s) and expiration date(s), whether license has been suspended or revoked and, if so, the date of such action and, if not currently licensed, whether license application is pending]:

6. (Upon information and belief) Respondent is in possession of the following licenses and unlicensed firearms [specify number and type of firearms and whether licensed or unlicensed, if known];
7. (Upon information and belief) There is substantial risk that respondent may use or threaten to use a firearm unlawfully against petitioner (and members of petitioner's family or household) for the following reasons:

WHEREFORE, petitioner prays

- (d) that the respondent be adjudged to have committed the family offense(s) alleged;
- (e) that the Court enter an order of protection, specifying conditions of behavior to be observed by the respondent in accordance with Section 842 of the Family Court Act, including the following conditions:
 1. Respondent shall be EXCLUDED from Petitioner's home.
 2. Respondent shall STAY AWAY from PETITIONER, Petitioner's HOME, and Petitioner's WORKPLACE.
 3. Respondent shall STAY AWAY from PETITIONER'S CHILD, CHILD'S SCHOOL and DAY CARE.
 4. Respondent shall REFRAIN FROM COMMUNICATION OR CONTACT BY MAIL, EMAIL, TELEPHONE, VOICEMAIL, TEXT MESSAGE, OR ANY OTHER MEANS with Petitioner.
 5. Respondent shall REFRAIN FROM THIRD PARTY CONTACT.
 6. Respondent shall not interfere with the care and custody of Petitioner's child.
 7. Respondent shall refrain from menacing, harassing and/or assaulting Petitioner or committing any family offense against her.
 8. That the Respondent is not to post, transmit, or maintain, or cause a third party to post, transmit, or maintain, any images, pictures, or other media, depicting the Petitioner in a naked state or participating in any sexual act OR threaten to do the same.
 9. That the Respondent is to refrain from using Petitioner's likeness or impersonating Petitioner on any social media.
 10. Awarding Petitioner a Temporary Order of Custody for **CHILD'S NAME**.
 11. Awarding Petitioner a Temporary Order of Child Support for **CHILD'S NAME**.
- (f) and for such other and further relief as to the Court seems just and proper.

Dated: , 2020

Petitioner, **INSERT NAME**

D. FILING EMAIL TEMPLATE

Subject Line: Client Name; County of Filing; Signed Family Offense Petition Attached for Filing

Good morning/afternoon,

Attached please find a signed pro se Family Offense Petition for pro se Petitioner XX. I am filing the petition on their behalf. They can be reached at XXX-XXX-XXXX. I am providing XX pro se assistance as part of Sanctuary for Families' CAP pro bono program, in the limited capacity of drafting XX's pro se Family Offense Petition. I am not an attorney – I am a law student – and I will not be appearing with them during the virtual hearing. [If you are planning to appear, replace with this language: I will be appearing with XX today for the limited purpose of assisting with their first appearance, and for this first appearance only.]

[Optional depending on client needs/preferences:] Since the client does not have an e-mail address, however, please feel free to send me the link to the paperwork after the appearance. I will make sure they get possession of it.

Petitioner's name: XX

**** Petitioner requires XX Interpreter**

DOB: XX

Current Address: XX

Petitioner safe phone number: XX Petitioner's e-mail address: XX

Petitioner's Children (names, DOBs, residences): XX

Respondent's name: XX Respondent's DOB: XX Respondent address: XX

Respondent's Physical Characteristics²³:

- Height: XX
- Weight: XX
- Hair: XX
- Eye Color: XX
- Race: XX
- Distinguishing Marks: [List any distinguishing features, like tattoos]

Best,

Name

[Delete Signature Block]

²³ This is necessary to help the sheriff's office effectuate service.

E. GLOSSARY OF FAMILY COURT TERMS

- 1) **18(b):** A court-appointed attorney
- 2) **ACD:** Adjournment in Contemplation of Dismissal. This is a final disposition of a criminal case where the defendant faces no criminal penalty if s/he has no problems with the system for a designated period.
- 3) **ACS:** Administration for Children's Services. The city agency responsible for the welfare of children. Petitioners may also refer to it as "BCW," its former name.
- 4) **Attorney for the Child (AFC):** An attorney who the judge appoints to represent a child, usually in a visitation or custody case.
- 5) **COI:** Court-Ordered Investigation. The court will order ACS to investigate the mother and/or father to assess the child(ren)'s safety.
- 6) **Control Date (CD):** A court date to check on the progress/status of a case; distinguished from a hearing or trial date.
- 7) **Court Attorney:** The judge's assistant whose responsibilities include managing the calendar and conferencing cases.
- 8) **Court Attorney Referee:** A judicial official who sometimes presides over family court proceedings in place of a judge.
- 9) **DIR:** Domestic Incident Report. The police report taken at the scene of the alleged incident or at the police precinct. The petitioner will have a pink duplicate copy.
- 10) **DP:** Decline to Prosecute.
- 11) **Ex parte:** Not in the presence of the opposing party. For example, the temporary orders of protection granted on the intake date are ex parte
- 12) **F-Petition:** A petition for child support or maintenance
- 13) **Forensic Report or "Forensic":** A court-ordered evaluation and report conducted by a psychiatrist, psychologist or social worker in contested custody or visitation proceedings. The purpose of a forensic evaluation is to make a recommendation as to what custody or visitation arrangement is in a child's best interest.
- 14) **IDV:** Integrated Domestic Violence Court- a court that hears overlapping domestic violence cases involving the same parties.
- 15) **INR:** Investigation and Report, to be conducted by the department of probation for the purposes of assessing the safety of the child(ren).
- 16) **NYSID #:** The New York State identification number assigned to defendants when they are placed in the custody of the department of corrections.
- 17) **O-Petition:** A family offense petition.
- 18) **OP/TOP/FOP:** Order of Protection/ Temporary Order of Protection/ Final Order of Protection
- 19) **P-Petition:** A paternity petition
- 20) **Part:** Courtroom
- 21) **Pro se:** Litigant unrepresented by an attorney.
- 22) **Return of Process:** Refers to the first return date in court when the petitioner must provide documentation in the form of an affidavit or affirmation of service that service was made on the Respondent
- 23) **Short Order:** An order signed by the court that temporarily or permanently resolves an issue
- 24) **Stipulation, or "Stip":** Stipulation of Settlement- a written agreement settling or resolving an issue or all issues in a case. Family court stipulations are drafted by either the attorney or the judge's court attorney
- 25) **TOC/ FOC:** Temporary Order of Custody/ Final Order of Custody
- 26) **TOV/ FOV:** Temporary Order of Visitation/ Final Order of Visitation
- 27) **V-Petition:** A petition for custody and/or visitation

E. RESOURCE PACKET FOR CLIENTS



This packet includes resources that you may find helpful during the COVID-19 pandemic. Information about each resource is below, in the order that you will find them.

Courtroom Advocates Project (CAP) Petitioner Resource Guide

1. 7-Step Personalized Safety Plan – this document is a planning tool to help increase your safety and prepare you in advance for the possibility of further violence.
2. Safety Planning – COVID-19 – this document offers information that can help keep you safer during the COVID-19 pandemic.
3. Family Justice Center Flyers – this document has an overview of the services offered at New York City’s Family Justice Centers along with contact information for each of them. The New York City Family Justice Centers are walk-in centers for victims of domestic violence, elder abuse, and sex trafficking.
4. Financial Affidavit in Support of Request for a Court Appointed Attorney – if a petitioner would like a free, appointed attorney in Family Court, they should fill out this document in preparation for their next Family Court date to see if they are eligible for free representation.
5. Service Information – this document lists the contact information for the sheriff in each borough, which petitioners can use to follow up regarding service.
6. Project SAFE Flyer – this document has information about Project SAFE, which helps survivors of violence change their locks when their safety at home has been compromised.
7. Log of COVID-19 Resources – this document contains a list of websites that can help you access a variety of resources during the COVID-19 pandemic.
8. Free Internet Services – this document offers information about accessing free internet during the COVID-19 pandemic.
9. Guide to eNotify - This guide explains how to set up an eNotify account, which is the secure inbox for Court messages.



7 - Step Personalized Safety Plan

Name: _____

Date: _____

Review dates: _____

The following steps represent my plan for increasing my safety and preparing in advance for the possibility of further violence. Although I do not have control over my partner's violence, I do have the option to create action plan in order to respond to him/her. I can use this plan to get my children and myself to safety.

STEP 1: Safety During a Violent Incident

- A. If we are going to have an argument, I can try to move to a space that is lowest risk, such as _____. (Try to avoid arguments in the bathroom, garage, kitchen, near weapons, or in rooms without access to a door that leads outside.)
- B. If it is not safe to stay, I can _____. (Practice how to get out safely; what doors, windows, elevators, stairwells, or fire escapes could you use?)
- C. I can keep my purse and car keys ready and put them _____ so that I can leave quickly.
- D. I can tell _____ and _____ about the violence and ask them to call the police if they hear suspicious noises coming from my home.
- E. I can use _____ as my code word with my children or my friends so that they can know to call for help.
- F. I can teach my children how to use the telephone to contact the police and the fire department.
- G. If I have to leave my home, I can go _____ or _____. (Decide this even if you don't think there will be a next time.)

Note: Use your judgment. If the situation is very serious, do what you are able to do to calm the abuser as you try to protect yourself and your children until you are out of danger.

STEP 2: Safety When Preparing to Leave

- A. I can leave money and an extra set of keys with _____ so that I can leave quickly.
- B. I can keep copies of my important documents (such as birth certificates or naturalization papers for myself and my children, immunization records, passports, bank account numbers, driver's license, restraining order, etc.) and keys and some extra clothes with _____.
- C. I can open a savings account to increase my independence. (Preferably opened in a bank other than the one used by you and your partner.)
- D. Other things I can do to increase my independence include: _____
- E. The NYC Domestic Violence hotline number is 1-800-621-4673. I can keep change for phone calls with me at all times (**if public phones are still available**). I understand that if I use my telephone, credit card or cell phone, the following month's telephone bill will tell my abuser those numbers that I called after I left. To keep my telephone communications confidential, I can either use coins or get a friend to permit me to use his/her telephone, credit card for a short time when I first leave.
- F. I can check with _____ and _____ to see who would be able to let me stay with them or lend me money.
- G. I can sit down and review my safety plan every _____ so that I know the safest way to leave home.
- H. I can rehearse my escape plan and, as appropriate, practice it with my children.

Note: Abuse victims frequently leave the residence they share with the abuser. Leaving must be done strategically in order to increase safety. Abusers often strike back when they believe that a victim is leaving the relationship.

STEP 3: Safety in My Own Residence

There are things that can be done to increase safety while I am in my own residence. These safety measures can be added step by step.

- A. If my partner no longer lives with me, I can take action to ensure my safety and my children's safety in our home. Safety measures I can use include:
- Changing the locks on the doors and windows as soon as possible;
 - Changing the phone number to unlisted in a different name;
 - Obtaining a confidential post office box to keep my address confidential;
 - Replacing wooden doors with steel metal doors;
 - Installing a security system including additional locks, window bars, poles to wedge against the doors, an electronic system, etc;
 - Purchasing rope ladders to be used for escape from windows above the first floor;
 - Installing smoke detectors and purchasing fire;
 - Talk to your landlord about the possibility of installing an outside lighting system that lights up when a person is coming close to the building.
- B. I can teach my children to _____ when I am not available.
- C. I can inform _____ and _____ about who has permission to pick up my children, and ask them to call the police in the event that they see something unusual.
- D. I can teach my children how to use the telephone to make a collect call to me and to _____ in the event that my abuser abducts them.
- E. I can inform _____ and _____ and _____ that my partner no longer resides with me and that they should call the police if he is observed near my home or in my building. I can provide a picture of my abuser to neighbors and school teachers so they will recognize the abuser if he/she appears at my house or at my children's school.

STEP 4: Safety With an Order of Protection

- A. I can keep my order of protection
(Always keep it on or near your person. If you change purses that is the first thing that should go into the new bag.)
- B. If my abuser breaks the protective order, I can_____.
- C. If the police are not responsive, I can _____.
- D. I can inform_____and_____ that I have a protective order in effect.
- E. If my abuser destroys my order of protection, I can get another copy from the_____District/ Probate Court.

STEP 5: Safety on the Job and in Public

- A. I can inform_____and_____and _____ at work of my situation.
- B. I can use voice mail, the receptionist, or a co-worker to help screen my telephone calls at work.
- C. When leaving work, I can _____ to ensure my safety.
- D. _____ If problems occur when I am driving home, I can _____.
- E. _____ If I use public transportation, I can_____.
- F. I can also take the following precautions to ensure my safety: _____.



STEP 6: Safety and Drug or Alcohol Consumption

The abuser's use of alcohol or other drugs may give him/her an excuse to use violence. Furthermore, the use of alcohol or any other drug can reduce a survivor's awareness and ability to act quickly to protect herself from his/her abuser. Therefore, in the context of alcohol or other drug consumption, a survivor needs to make specific safety plans.

If drug or alcohol consumption has occurred in my relationship with my abuser, I can enhance my safety in the following ways:

- A. If I am going to consume alcohol or other drugs, I can do so in a safe place and with people who understand the risk of violence and are committed to my safety.
- B. I can also _____ or _____.
- C. If my abuser is consuming, I can _____.
- D. To protect my children, I might _____

_____.

Note: The legal outcomes of using illegal drugs can be disastrous for a survivor of domestic violence. For example, such use may hurt his/her relationship with his/her children (or hinder his/her ability to protect his/her children) and put his/her at a disadvantage in other legal actions with his/her abuser. Survivors should be aware of the potential losses involved when using illegal drugs.

STEP 7: Safety and My Emotional Health

- A. If I feel depressed about being alone or pressured to return to a potentially abusive situation, I can _____.
- B. When I have to communicate with my abuser in person or by phone, I can _____.
- C. I can try to use positive self-talk with myself and be assertive with others. I can remember that I do not deserve to be beaten whenever I feel others are trying to control or abuse me.
- D. I can read/watch _____ to help me feel stronger.
- E. I can call _____ and _____ and _____ as additional resources to support me.



Important Phone Numbers

Police Dept (home): _____

Police Dept (school): _____

Police Dept (work): _____

Domestic Violence Agency: _____

Shelter Hotlines: 1-800-621-4673 (Safe Horizon); 1-800-664-5880 (Violence Intervention Program)

Other: _____

CHECK LIST for Safety Plan Implementation: What to Take When I Leave

Note: I can keep items in one location. If I have to leave in a hurry, I can grab them quickly.

Identification for myself and my children including:

Drivers' License
Birth Certificates
Passports
Social Security Card
Green Cards
Welfare/Medicare cards

Financial Resources:

Money
Bank/Check Books
Credit Cards

Important Papers:

Lease or rental agreement
Insurance papers
School Records
House Deed
Medical Record

Miscellaneous:

Keys to house, car, office
Safety deposit box
Post office box, etc.
Medications
Jewelry
Address/Phone Numbers book

SAFETY PLANNING - COVID19

A GUIDE FOR SURVIVORS OF DOMESTIC VIOLENCE

1. BUDDY SYSTEM CODE WORD

Identify at least two people that you can contact with a "code word" to let them know if you are in trouble. Plan in advance what they should do if you send them the code word.

2. "SAFEST ROOM"

If there is an argument, identify an area of the home you can move to where there are no weapons and there are ways for you to leave the house, apartment, or building, such as a door or window to exit the house/apartment.

For some survivors, especially those quarantined at home with an abuser during coronavirus, no room may feel safe, so we call it the "safest rooms". If you can at least identify the lowest risk areas, you may be able to reduce harm.

3. PLANNING WITH CHILDREN

CODE WORDS: If you have children, decide how to communicate urgency with them. For example, one survivor would open her arms and her daughter knew that meant to come running to her for safety. Some survivors create a "code word" with their children that means they should go to the "safest room" in the home that you have already decided upon.

EMERGENCY NUMBERS: If for some reason you are not able to make emergency calls, give your children the safety number/s, if they are old enough.

4. NOTIFY THE POLICE BEFORE AN EMERGENCY

Ahead of time, you can notify your local police station of your concerns. Let them know the history and your concern of being in isolation due to coronavirus. It may be useful to speak with the Domestic Violence officer.

5. EXIT PLAN

In case you have to flee, create an exit plan ahead of time with someone who could support this need. Is there a trusted friend/relative who you can stay with, if needed?

6. SUPPLIES, FOOD & MEDICATION

Check your supplies and food. If you need food and do not have the money, check your local pantry, temple/church/mosque, etc., or other community organizations.

Remember to keep your medication in the safest, easily accessible location in case of emergency.

7. EMERGENCY BAG

Pack a bag with an extra set of keys, clothes for you and your children, a pay-as-you-go cellphone, medications, copies of important documents, etc.

8. IMPORTANT DOCUMENTS

Make copies or take pictures of your important documents for yourself and send them to a trusted friend or relative. (IDs, social security cards, immigration documents, birth certificates, health insurance information, and Orders of Protection) Be mindful of sending anything via phone or computer. Please use whatever method is safest for you.

9. SEEKING SOCIAL SUPPORT

With social distancing and quarantining, survivors can feel even more isolated, and abusers may use further isolation as a power and control tactic.

Identify trusted friends, relatives or online support groups where you can still connect virtually. If you have a friend who may be experiencing abuse, be sure to reach out to them even more during this time.

10. CREATE A "PEACEFUL SPACE"

If you cannot leave your home, try to create a "peaceful space" for yourself in your home (if that is safe for you). You can draw pictures of a more peaceful place and put them on a wall to help you take an emotional break to visualize a more peaceful place. This is also an activity you can do with your children. You can also write positive affirmations and put them up on the wall to remind yourself of your worth.

11. HOLDING ONTO YOUR PLAN

Consider keeping a list of your safety plan in your phone or wherever might be safe for you. Please consider what is safest for you.

If you choose to write your plan somewhere, consider listing only key words that help you remember the plan, but that would not be clear to your abuser. If this is not safe, try to memorize your plan, focusing on memorizing at least one key emergency number on your list of resources.

FOR MORE INFORMATION & RESOURCES, PLEASE VISIT

sanctuaryforfamilies.org/safety-planning-covid19



Sanctuary for Families

The New York City Family Justice Centers are a one-stop shop for clients who are seeking free legal, counseling, and/or case management services.



Love Should Not Hurt

Everyone deserves to feel safe and respected in their relationships.

New York City Family Justice Centers

The New York City Family Justice Centers offer **FREE** and **CONFIDENTIAL** help to survivors of intimate partner violence, sex trafficking and elder abuse. You can get social services, legal and criminal justice services from nonprofit agencies that help domestic violence victims in one place.

The Centers welcome people of any:

- Age;
- Immigration status;
- Sexual orientation or gender identity;
- Income level; and
- People with disabilities.

All Centers are open Monday through Friday from 9:00 a.m. - 5:00 p.m.

Interpretation services are available at every Center .

No appointment is needed

NYC Family Justice Center, Bronx
198 East 161st Street, 2nd Floor
(718) 508-1220

Subway: **4 B D** to Yankee Stadium
Bus: BX1, BX2, BX6 and BX13

NYC Family Justice Center, Brooklyn
350 Jay Street, 15th Floor
(718) 250-5111

Subway: **A C F R** to Jay Street
or **2 3 4 5** to Borough Hall
Bus: B25, B26, B38, B54, B57, B61, B62, B65,
B67, B75 and B103

NYC Family Justice Center, Manhattan
80 Centre Street, 5th Floor
(212) 602-2800

Subway: **4 5 6** to Brooklyn Bridge-City Hall
J Z to Chambers Street
N Q R to Canal Street
1 2 3 A C to Chambers Street
Bus: M5, M9, M22 and M103

NYC Family Justice Center, Queens
126-02 82nd Avenue
(718) 575-4545

Subway: **E F** to Kew Gardens-Union Turnpike
Bus: Q10, Q37, Q46 and Q60

NYC Family Justice Center, Staten Island
126 Stuyvesant Place
(718) 697-4300

Close to the St. George Ferry Terminal
Staten Island Railroad to St. George Ferry Terminal
Bus: S40, S42, S44, S46, S48, S51, S52, S61, S62, S66, S74,
S76, S78, S81, S84, S86, S90, S91, S92, S94, S96 and S98

The Family Justice Centers can help with:

- Planning for your safety;
- Applying for public benefits, shelter, housing and other support services and programs;
- Mental health and counseling services for you and your children for mental and emotional well-being;
- Referrals to job training and education programs, as well as education and coaching services to help with budgeting, credit repair, and other financial issues;
- Legal help for orders of protection, custody, visitation, child support, divorce, housing and immigration matters;
- Connecting to trained law enforcement such as NYPD, NYC Sheriff's Office, District Attorney's Office; and
- Childcare, for children three and over while you get services at the Family Justice Center.

For immediate assistance, call 311 or 1-800-621-4673 (HOPE).

Or visit: nyc.gov/nychope or nyc.gov/ENDGBV



SERVICE AND FEE INFORMATION

The Office of the Sheriff serves notices, petitions, subpoenas, orders, writs and other related papers.

SERVICE FEE IS \$52.00 PAYABLE TO NYC SHERIFF

There is No Fee for service of domestic violence process and accompanying papers; or, for writ of habeas corpus process.

The sheriff accepts service of orders of protection without a fee. In addition, if a person files an order of protection and any other process such as a divorce summons, support summons or a paternity subpoena for the same party, all the accompanying processes are free at that time.

OFFICE OF THE SHERIFF COUNTY LOCATIONS

NEW YORK

Office of the Sheriff
66 John Street, 13th Floor
New York, NY 10038
(212) 487-9734

KINGS

Office of the Sheriff
Brooklyn Municipal Building
210 Joralemon Street, 9th Floor
Brooklyn, NY 11201
(718) 488-3545

BRONX

Office of the Sheriff
Bronx Customer Service Center
3030 Third Avenue, 2nd Floor
Bronx, NY 10455
(718) 993-3880

QUEENS

Office of the Sheriff
30-10 Starr Avenue
Long Island City, NY 11101
(718) 707-2170

RICHMOND

Office of the Sheriff
Staten Island Business Center
350 St. Marks Place, Room 409
Staten Island, NY 10301
(718) 815-8407

Need help? Call our 24-hour hotline (llámenos para ayudarle) 1-800-621-HOPE (4673). If you are in immediate danger, call 911. ↓

Feel Safe in Your own Home

No one should have to fear for their safety in their own home.

If you have recently experienced a crime in which the security of your home has been compromised, our Project SAFE program can send a professional locksmith to change your lock or cylinder for free.

When you call Project SAFE, a trained advocate will:

- Speak with you about your safety concerns
- Help you identify resources
- Help you develop a plan to address your safety concerns
- Determine if you qualify for a free lock change. If you do qualify, an advocate will set up an appointment with a professional locksmith



Call Us

Call Project SAFE: **855-234-1042**.

To reach the TDD machine for hearing impaired clients: **800-810-7444**.

Share



<https://www.safehorizon.org/project-safe-lock-replacement/>

**Financial Affidavit in Support of Request for a Court
Appointed Attorney**

FILE # _____
DOCKET # (s) _____

(Court use only)

While each party in Family Court has a right to the assistance of counsel, not all parties in all types of cases are eligible for assigned counsel regardless of financial circumstances.

I, _____, swear to the truth of the answers to the following questions: [print name]

1. Can you afford to hire a lawyer to represent you in this case? • Yes • No

2. Are you now employed? • Yes • No

If yes, print the name and address of your employer:

Name: _____

Address _____

How much do you earn per month? \$ _____

Attach a copy of your last two (2) years tax returns.

3. If under the age of 21, how much do(es) your parent(s) or guardian(s) earn per month, approximately?
\$ _____

4. What is your marital status?

• Single • Married • Widowed • Separated • Divorced

If married, how much does your spouse earn per month? \$ _____

5. Have you received, within the past 12 months, any income from a business, profession or any other form of self-employment, or in the form of rent payments, interest, dividends, retirement or annuity payments or other sources? • Yes • No

If yes, state the amount(s) you received and specify the source: \$ _____

6. Do you have cash over \$1,000 on hand, or \$1,000 or more in a savings or checking account or financial instrument such as a certificate of deposit (c.d.)?

• Yes • No

If yes, state the total amount you have? \$ _____

7. What is your total number of financial dependents?

List the name(s) of person(s) you support and your relationship to them:

Name & Relationship: _____

Name & Relationship: _____

Name & Relationship: _____

Name & Relationship: _____

8. Do you rent or own your home? • Rent • Own

What is your monthly costs in maintaining your residence [include rent/mortgage]?

\$ _____

The court may request that you provide additional financial documents. When requested, failure to complete this form or to bring requested documents may result in not being assigned an attorney or losing the attorney already assigned to you.

Sworn to before me this _____
day of _____, 20____

Notary Public

[sign name before a notary or before
Magistrate/Referee]

Log of Resources

This is a log of five fruitful websites with various information ranging from securing food and services to advice on how to discuss COVID-19 with children.

<http://www.211.org/services/covid19>

<https://www.foodbanknyc.org/covid-19/>

[https://www.nasponline.org/resources-and-publications/resources-and-podcasts/school-climate-safety-and-crisis/health-crisis-resources/talking-to-children-about-covid-19-\(coronavirus\)-a-parent-resource](https://www.nasponline.org/resources-and-publications/resources-and-podcasts/school-climate-safety-and-crisis/health-crisis-resources/talking-to-children-about-covid-19-(coronavirus)-a-parent-resource)

<https://www.redcross.org/about-us/news-and-events/news/2020/coronavirus-safety-and-readiness-tips-for-you.html>

<https://ag.ny.gov/coronavirus>

Internet Resources:

Comcast is offering 60 days free for student who do not have access to the internet. Comcast is also offering free Xfinity WiFi hotspots to non customers and customers.

<https://corporate.comcast.com/covid-19>

Spectrum for 60 days for those students who do not have access to any internet service. Students being served are K-12 and College Students. There are no installation fees. Again, please inform clients this is only if they don't have internet services.

Number to **Spectrum** 844-488-8395

Dish & Cox are also offering up to 60 days of free internet.

F. eNOTIFY GUIDE

eNotify Document Portal NYS Unified Court System

USER GUIDE FOR EMAIL RECIPIENTS

eNotify User Guide- Revised 1/2022

What is eNotify?

- Portal for litigants and agency partners to securely receive and view court documents.
- Inbox for documents received as a secure email that can be viewed and downloaded.
- Indicates the sender's name, time & date of sending, and any attachment details.
- Ability to search sent and received mail by keywords.

eNotify User Guide- Revised 1/2022

Sign in to eNotify

Click on the following link to access the eNotify sign in page:

<https://enotify.nycourts.gov/>

The eNotify system allows for two different sign-in paths. Users can choose to either sign in with NY Courts, or sign in with Microsoft.


eNotify

Log In

Sign in with NY Courts

User

Password

 Sign in with NY Courts

[Forgot Username](#) [Forgot Password](#)

If you have an existing NY Courts account (NYSCEF, eTrack, etc.), please sign in using the form above. Once signed in, you will be able to view secure messages that were sent to the primary e-mail address associated with your NY Courts account.


Need to verify or change the e-mail address on your NY Courts account? Log into the NY Courts Self Service application, and under Manage Account, choose EMail Address.

Don't have a NY Courts account?

Create NY Courts Account

OR

Sign in with Microsoft

 Sign in with Microsoft

If you have an existing personal or work account with Microsoft, click the button above to sign in.

Once signed in, you will be able to view secure messages that were sent to the primary e-mail address associated with your Microsoft account.

If you previously created a Microsoft account to view encrypted e-mails from the old eNotify system that used Outlook Message Protection, you can sign in with that account by clicking the button above.

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Sign in With NY Courts

- Allows users to sign in and view their eNotify portal using their existing NY Courts account information, or to create a new NY Courts Account to sign in with.

If the user chooses to sign in with NY Courts and create a new NY Courts account, they will be prompted with the below screen to create the account:

The screenshot shows a web form titled "Create a New York Courts Account" from the New York State Unified Court System. The page has a dark blue header with the system name and a "Go To Court Website" link. Below the header is a navigation menu with "Options" (Home, Forgot Password?) and "Help" (System Requirements, FAQ, Contact Us). The main content area is divided into two sections: "Login Credentials" and "Name & Contact". The "Login Credentials" section includes fields for "Username:" and "New Password:" (with a "Re-enter New Password:" field below it). The "Name & Contact" section includes fields for "Prefix:" (optional), "First Name:", "Middle Name:" (optional), "Last Name:", "Suffix:" (optional), and "Email address:". A "Create Account" button is at the bottom of the form.

New York State Unified Court System
Go To Court Website

Options
Home
Forgot Password?

Help
System Requirements
FAQ
Contact Us

Create a New York Courts Account

This page will help you create a new user account for the eNotify application. You may also be able to enable this account for use with other New York Courts applications in the future.
To create your account, please enter the following:

Login Credentials

Username:

New Password:

Re-enter New Password:

Name & Contact

Prefix: (Optional)

First Name:

Middle Name: (Optional)

Last Name:

Suffix: (Optional)

Email address:

Create Account

eNotify User Guide- Revised 1/2022

Once signed in, the user will only be able to view messages that have been sent to their primary email address linked to their NY Courts account.

If the user would like to change the primary email address associated with their NY Courts account, press the **Self-Service Application** link on the login page:

If you have an existing NY Courts account (NYSCEF, eTrack, etc.), please sign in using the form above. Once signed in, you will be able to view secure messages that were sent to the primary e-mail address associated with your NY Courts account.

Need to verify or change the e-mail address on your NY Courts account? Log into the NY Courts **Self Service application** and under Manage Account, choose EMail Address.

Don't have a NY Courts account?

Create NY Courts Account

Within the application, press the **Email Address** tab to edit and save the new primary email address.

New York State Unified Court System

UCS Security – Self Service for Your Account

Manage Account

- My Applications Home
- Password
- Challenge Question
- Link ActiveDirectory
- Two-Step Verification
- > Email Address**
- Phone Numbers
- Authentication

Manage Account: Set Email Addresses

EMAIL ADDRESS INFORMATION

The following email addresses are currently on file for your account. You may update any of the addresses below as needed.

UCS Common

This address is used for password reset & account maintenance.

UCS Account Email Address:

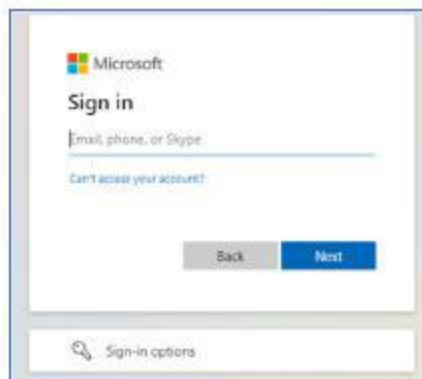
PrimaryEmail@nycourts.gov

Save

eNotify User Guide- Revised 1/2022

Sign in With Microsoft Account

If the user chooses to sign in with Microsoft, they will be prompted with Microsoft's sign in screen:



eNotify User Guide- Revised 1/2022

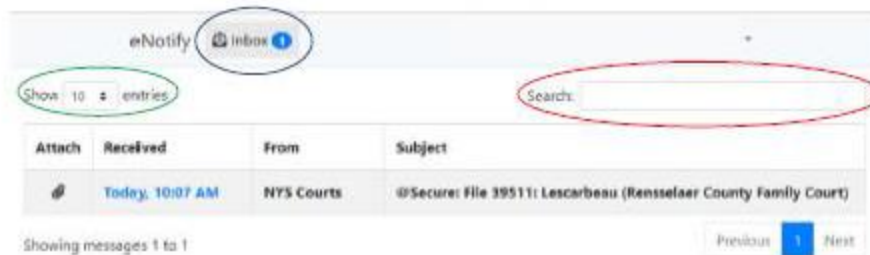
Inbox

The eNotify Inbox will be the destination for a user's received secure emails. The inbox is defaulted to show the last 10 entries on a single page but can be adjusted to show up to the last 100 entries (Circled Green in the screenshot below).

The list of secure emails within the Inbox are sorted by the time of delivery. Emails that are new and unread will be **bolded**, and the number of unread emails will be indicated by a **badge**, or amount counter (Circled Blue in the screenshot below).

The search bar in the Inbox can be used to search the user's inbox for a file #, court name, party name, or any other relevant search criteria (Circled Red in the screenshot below).

Screenshot (Inbox)



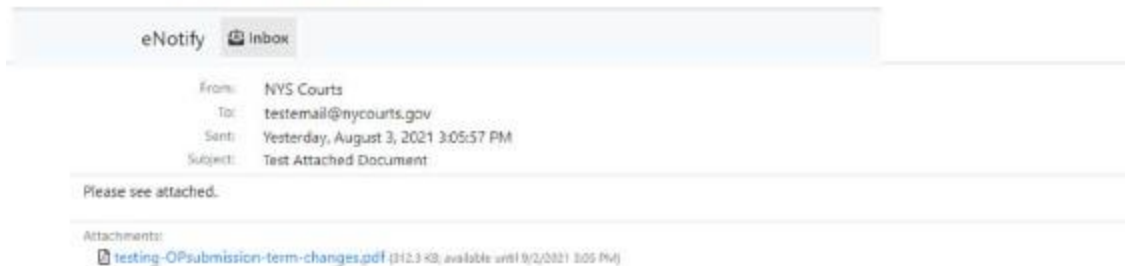
eNotify User Guide- Revised 1/2022

Opening a Secure Email from the Inbox

Once the user clicks a secure email they receive, they will be prompted with the email's summary screen, which displays the following information:

- Sender information
- Recipient information
- Time email was sent
- Subject of email
- Email's message
- Email's attachment(s) / document(s)

Documents can be viewed and downloaded from this screen. The email's summary will also display the expiration date/time for the attachment. (if there is one associated).



G. INTERVIEWING DOMESTIC VIOLENCE VICTIMS

INTERVIEWING AND ASSISTING DOMESTIC VIOLENCE SURVIVORS

by B. J. Cling & Dorchon A. Leidholdt

*Why did you stay?
Why didn't you just leave? Why did he hit you?
There is no "why."*

Don't ask a victim to explain the abuser's conduct.

The Attorney-Client Relationship: Where it Begins

Your first interaction with your client is crucial. If he/she feels that you are untrustworthy, judgmental, or unable to relate to his/her experience, he/she will censor him/herself and you will not get the information you need to represent him/her effectively. At the first meeting, you will have an opportunity to gather vital information that may not be available again. Memories dim and bruises fade. In the course of your relationship with your client, you will give him/her advice — some that he/she may not want to hear. If he/she trusts you, it is far more likely he/she will be able to hear bad news — such as the fact that some form of visitation between the children and abuser is probably inevitable — without feeling that you are the enemy. With an attorney-client relationship predicated on trust, the client will be far more likely to make sound decisions and act in a way that is in his/her and his/her children's interest. Such a relationship may not be easy to achieve, however, particularly since he/she is emerging from a relationship in which his/her trust has been repeatedly betrayed.

It is important that you do everything possible to make your first interview a success for both you and your client. This chapter will provide concrete guidance on setting up an interview, interviewing techniques, understanding, and recognizing domestic violence, understanding post-traumatic stress disorder, and moving forward with legal and non-legal remedies. Careful preparation and attention to all of these matters will allow you to provide your client with the representation he/she needs to find freedom from abuse.

Communicating Safely

From the moment a victim takes steps to end abuse, his/her risk of injury increases (see Chapter 4, Assessing Lethality & Risk: What Do We Know, How Can We Help?). Many abusers are able to use technology to monitor the movement and communications of the victim. This includes communication with you, the attorney. Your communications with the client could inadvertently alert the abuser that your client is trying to gain freedom from the abuser. Resources in the notes provide guidance on how to help your client identify these risks and find safe ways to communicate with you.¹

If the client does not have a secure cellphone that is not on the abuser's account, be careful about telephone contact. Abusers frequently monitor victims' calls on their own phones. Ask if there is a friend or relative with whom you can leave messages without endangering the client. If you call the

¹See National Network to End Domestic Violence, Technology Safety, techsafety.org/resources-survivors (provides Technology Safety Plan; guidelines on cell phone and online safety; safety-related apps; over- view of spy-ware).

client's home and someone else answers the phone, do not just hang up. That could create suspicion and trigger retaliation. Instead, ask for someone else and apologize for dialing a wrong number.

It can be helpful for the client to create a new email account with a new password that can be used for communications with counsel and others concerning the case. The client's existing email may not be secure from the abuser.

Communicating Effectively

Stretching Further to Connect With Your Client

Survivors of domestic violence often have been mistreated over a long period of time. Although they may not complain, they are likely to be sensitive to negative social cues. On the other hand, many survivors are very responsive to help, especially if it is delivered in a warm, empathic way. Even if you are terribly busy, make an extra effort to answer your client's calls. Your client needs to understand that you value their communications and respect them, even if you can't speak to the client every time he/she calls. Don't express irritation with the client for calling you, even if you think it is too often. Understand that the client is going through a frightening process and needs reassurance. If you feel the client is calling you excessively, try making appointments to talk with the client and setting time limits on calls. Remember that emergencies do happen in domestic violence cases and there may be urgent reasons for the client's call. Talk with your client about alternative sources of assistance when the client is unable to reach you, including calling 911 for help from the police.

Some domestic violence victims' lives are so in flux that it is difficult for them to keep appointments. This is especially likely if the abuse was recent or is ongoing or if the victim was forced to flee their home. When you choose the date of the first meeting with your client, explain that punctuality is important and to call in advance if the client needs to reschedule. It is helpful to let your client know what your expectations are, and it is important that those expectations be realistic and acknowledge their difficult circumstances, including lack of childcare.²

Awareness of the Strength of Your Role

It is very important to understand the disparity in power between you and your client so that it will not inadvertently be used against them. You will probably have knowledge, skills, access, and credibility that the client will not. You have privileges based on race, class, education, gender, facility with the English language, or a combination of these factors that the client will not possess.³ As the client's attorney, you will be able to use these privileges on behalf of your client to help him/her become a full participant in his/her case, to make the client's situation understandable to the court, and to enhance the client's credibility. Take care not to let this power differential work to the client's

² Lack of childcare can also make it difficult for a client to make appointments. Children often accompany on appointments and are watched by someone else in the office or a willing friend. It is not a good idea to bring children, except newborns or sleeping infants, into the interview unless it is confined to a discussion of financial information.

³ Your client may be from a different ethnic or religious group than yours or an immigrant. Your client may be a member of the LGBTQ community, or very young. The client may have disabilities. It is important both to recognize your own presumptions and to understand the realities of your client's family and community life. Chapters elsewhere in this book address these special concerns. Educate yourself about your client's culture or religion, especially about any religious beliefs and cultural customs that may become an issue in court. You may have to become your client's cultural interpreter to the court or forensic expert. Avoid scheduling court dates and trial preparation sessions on religious holidays. If you need to schedule trial preparation when your observant client is fasting on a holy day, respect the need to take breaks for prayers and avoid eating and drinking in their presence until it is time to break the fast.

disadvantage.

Understanding Legal Issues

It is very important to go into the first interview understanding the primary legal issue, the burden of proof, and what your client will need to establish in order to prevail. Your interview should be structured around obtaining the information you will need to meet the evidentiary burden for the sought-after relief. Chapters elsewhere in this book provide guidance on litigating family offenses (Chapter 9), handling custody and visitation matters where domestic violence is a concern (Chapter 10), and remedies available for immigrant victims (Chapter 22), as well as many other subjects. Familiarity with the range of issues that arise will help you conduct a more productive interview.

Understanding Intimate Partner Violence

In preparation for interviewing your client, learning about the dynamics of domestic violence will help you make the most of your time together. Seemingly unrelated details of your client's experience may begin to emerge as part of a pattern of abuse.

Coercive Control & Intimate Terrorism

"Battered woman syndrome" is no longer the preferred model in understanding the dynamics of domestic violence.⁴ One objection to the model was its focus on the victim's mental state. The focus has shifted from the victim's mental state to the abuser's attitudes and behavior. Current scholars such as Evan Stark, Mary Ann Dutton, and Julie Blackman now view "power and control" as the driving force behind intimate partner violence, which Stark characterizes as "strategies of coercive control."⁵ The essence of coercive control, Stark argues, is not specific physical violence but a campaign of physical and psychological strategies to bend the victim to the abuser's will.⁶

Also called "intimate terrorism," coercive control involves the abuser's surveillance of a victim and violation of their liberty through control over such daily functions as eating, sleeping, and going to the bathroom. An abuser's coercive control is often subtle, gradual, and may be confused with "romance," slowly escalating until the victim has virtually no privacy or freedom. The abuser's power may be manifested by occasional acts of violence, which demonstrate what the consequences will be if the victim does not follow orders. Since coercive control is generally not recognized by the penal code, which focuses on discrete acts of physical violence that often leave marks, abusers frequently learn that

⁴ Battered woman syndrome" is a theory developed by psychologist Lenore Walker that identified a constellation of characteristics ostensibly shared by domestic violence victims who have been subjected to battering over a period of time. A central feature of "battered woman syndrome" is "learned helplessness" — the inability of an abuse victim to seek help or escape even when these options are available. See Lenore E. Walker in *The Battered Woman* (1979).

This theory was initially used when trying to explain to a criminal jury why a severely abused woman was acting in self-defense when the client killed or injured their abusive partner, "battered woman syndrome" proved detrimental to domestic violence victims in this and other legal contexts. It has been especially problematic for domestic violence victims fighting for custody of their children: if abuse victims suffer from learned helplessness and cannot protect their children? "Battered woman syndrome" also suggests that battered women suffer from psychological pathology which can become a rigid pigeonhole that undercuts a victim's credibility: if the client was resourceful, assertive, and a fighter — clearly not suffering from "learned helplessness" — then their story of victimization must not be true.

⁵ Evan Stark, Anne Flitcraft, et al., *Wife Abuse in the Medical Setting: An Introduction for Health Personnel*, Domestic Violence Monograph Series, No. 7 (Washington, D.C., Office of Domestic Violence, 1981); Julie Blackman, *Intimate Violence: A Study of Injustice* (1989).

⁶ See Evan Stark & Anne Flitcraft, *Women and Children at Risk — A Feminist Perspective on Child Abuse*, 10:1 *International Journal of Health Services* (1988); Linda McKibben et al., *Victimization of Mothers of Abused Children: A Controlled Study*, 84:3 *Pediatrics* (1989); Lee Bowker, et al., *On the Relationship Between Wife Beating and Child Abuse*, in *Feminist Perspectives on Wife Abuse*, ed. Kersti Yllo and Michele Bograd (1988).

they can engage in coercive control with impunity.

Psychologists and advocates have identified a set of behaviors and attitudes common to abusers. These experts are careful to point out that not all abusers share all characteristics. It can be helpful to review this list with your clients to elicit important information that might not surface otherwise. In the alternative, review with your client the different facets of the Power and Control Wheel, developed by the Domestic Abuse Intervention Program (reproduced in the Appendix). Being able to understand and identify the characteristics of abusers and their strategies of control can be very helpful to your client, diminishing the abuser's authority and lessening feelings of self-blame.

Behavior often exhibited by abusers includes:

Jealousy and Possessiveness

Jealousy and possessiveness are two of the most common characteristics of abusers. These may be initially interpreted by the victim as signs of the abuser's passion and devotion. So on, however, it becomes apparent that they underlie the abuser's acts of domination and control. Jealousy on the part of an abuser can take many different forms, some overtly paranoid. The abuser of one victim hid cameras around the apartment in the hope of catching the client with a lover. Another abuser forced his victim to lower her eyes whenever she walked outside; he was convinced that she was flirting with every man she encountered. Abusers often accuse their victim of sleeping indiscriminately with everyone from the client's boss to their best friend.

Controlling Behavior

This hallmark of abuse may be related to jealousy and can permeate every facet of existence. Convinced that his partner is unfaithful, the abuser feels compelled to monitor the client's every move to prevent their infidelity. The abuser may not let the client work outside the home, go to the store, or wear certain clothing. Immigrant victims are especially vulnerable, as discussed in Chapter 22, as they must often contend with abusers who attempt to use their immigration status as a weapon of control.

Quick Involvement and Manipulative Behavior

With an abusive partner, the dating period is often brief and intense. Almost immediately, the abuser expects the partner to meet all of their needs, build their world around the abuser's, and submerge the client's identity in the abuser's. Again, this hyper-focus is often initially interpreted by the victim as passion and devotion; eventually the client realizes that it is their prison. During the courtship period, abusers often present a smooth facade.

Abusers are often skilled manipulators who start by tricking their victims into believing that they are devoted, dependable partners. When their victims realize that they were hoodwinked and are finally able to extricate themselves from the relationship, abusers turn their manipulative powers on the agencies their victims turn to for help. Abusers are surprising and consistently adept at deceiving criminal justice, child welfare, and judicial authorities, too often succeeding in having their victims investigated for child abuse or neglect, arrested for fabricated crimes, and tarred as alienating parents. Eventually, abusers often turn their powers of manipulation on their own children, persuading them that the client is to blame for the fact that the family is no longer together or is the reason why they can no longer live in their old neighborhood and attend their old school.

It is crucial for you, as your client's lawyer, to be aware and on guard of the seeming sincerity of the abuser. Even skilled professionals are often taken in by these master manipulators.

Isolation

Abusers frequently attempt to isolate their victims. Abusers often despise client's family and try to persuade the client that they are horrible to them. Abusers tell clients that they must choose between them and the abuser. To maintain the relationship, clients may move away from their parents and cut off contact with their family. Abusers may force clients to quit their jobs and stay home with the children. Abusers often criticize client's friends and persuade them that they are just using her. Abusers often want clients in the home, where the client is more under the abuser's control. Any social contact becomes a threat.

When an abuser isolates a client, they cut off their exit routes. This is a strategy that makes a great deal of sense from the abuser's point of view. A client has no one to help them understand what is happening to them, to bolster their self-esteem, and to offer assistance when they need to leave. It is important to note that the abuser may not consciously identify their behavior as a "strategy" but as a "normal reaction to the client's behavior which questions the abuser's authority," more exercising a right than developing a strategy.

Blame and Incessant Criticism

The abuser is never at fault and never accepts responsibility for any of their actions. The client is always to blame; too fat, too stupid, too emotional, a terrible cook, a terrible parent, bad in bed, and is responsible for the abuser's poor work performance, the abuser's poor relationships with other people, and above all, the abuser's violence to the client. The barrage of constant criticism undermines the client's self-esteem, often rendering the client even more dependent on the abuser.

Cruelty to Animals or Children

One victim reported that after she left the relationship, her children told her that during court-ordered visits the abuser would hit and kick the dog. In another case, the abuser became jealous of his victim's much-loved miniature poodle, and, one day in a rage, threw the dog against the wall, killing him.

Abusers are disproportionately likely to abuse their children as well as their partners. Studies show that in approximately half of domestic violence cases, children are also abused. Child abuse may take the form of depriving them of the love and care of the non-abusive parent. This is especially likely when the abuser is an immigrant with strong ties to another country. Service providers to victims report a plethora of cases in which abusers have abducted the children to another country after the victims fled the abuser.

Abusive and Violent Sex

Sexual abuse is a pervasive form of domestic violence. It is important to be alert to evidence of it, although it may not surface initially. Often the victim is reluctant to talk about sexual abuse — either because such abuse is so normalized in the relationship that it is not recognized as abusive or because the victim feels humiliation and shame about it and believes that he/she is responsible for it. It is likely that he/she will not be comfortable discussing sexual abuse until you have established a strong attorney-client relationship with her. You might initiate the discussion by saying something like, "Unwelcome sexual contact and sexual abuse are common in domestic violence. Many victims experience this kind of treatment, and it is not their fault." For in-depth guidance on this aspect of domestic violence, see Chapter 7, *Intimate Partner Sexual Assault : An Overlooked Reality of Domestic Violence*.⁷

⁷Many victims have experiences of sexual abuse that predate the sexual abuse inflicted on them by their batterer. More recent experiences may trigger memories of early sexual abuse that the victim suffered as a child. Unless the history of sexual abuse is relevant, for example, because it will surface in a forensic evaluation in a child custody case or is part of your

Verbal Abuse

Abusers usually subject their victims to an unending barrage of verbal abuse. The epithets “bitch” and “whore” are staples of domestic violence, along with threats and obscenities. Threats go hand in hand with physical abuse. Some abusers control their partners with threats punctuated by an occasional act of violence. Ask your client specifically, “Did your abuser ever threaten you?” One victim was frequently awakened in the middle of the night by her husband, showing her a length of cord or a sash. The implications were clear. During the day, he made frequent, approving references to O.J. Simpson, whose alleged murder of his wife was very much in the news. Frequently he would push or slap her. She lived in terror that he would kill her yet did not believe that she was a victim of domestic violence because the abuse she was subjected to was largely nonphysical.

Rigid Gender Roles

Abusers often demand that their partners conform to rigid gender roles. Many abusers want to control the family’s finances and discourage or undermine their victims’ educational and career aspirations.

Identifying Other Legal and Non-Legal Needs

In the course of the interview, you may discover that your client has other legal needs. It is not unusual for a domestic violence victim to have a range of different legal needs and eventually a variety of legal matters proceeding simultaneously. In many jurisdictions, domestic violence victims can access multiple levels of services through a Family Justice Center.⁸ This may be an efficient way to direct your client to the many resources that maybe needed to address the challenges they are facing. More information on Family Justice Centers appears in the Appendix.

Other Legal Proceedings

The victim may have a civil order of protection and a custody or visitation matter in Family Court and a criminal case pending in criminal court or Supreme Court. The client may also be involved in a matrimonial action and an immigration proceeding. You must be alert to all of these actual or potential matters, and ensure that they are coordinated in the best way possible to advance the client’s interests. For example, a client may want a divorce but the abuser is stalking and threatening him/her. The client’s immediate need is for an order of protection. You will want to advise the client about calling the police, and it may be helpful to intervene with the police on your client’s behalf. Or your client wants custody but thinks that there is a pending criminal prosecution against the abuser for assaulting the client. You may need to serve as a liaison between your client and the district attorney’s office to make sure they understand that the client is cooperating and wants a conviction. That conviction will be very helpful in the custody case and cooperation may help the client regularize their immigration status. Your client’s case may end up in an Integrated Domestic Violence Part. These special inter- jurisdictional courts are addressed in Chapter 14.

Non-Legal Needs

client’s asylum claim, it probably isn’t necessary to explore a past and painful prior history of sexual abuse. Such an exploration may not be germane to your case and may upset your client unnecessarily. It’s important to be clear when this information can be useful from a legal perspective, and when it is not.

⁸See e.g. New York City Family Justice Centers, www.nyc.gov/html/ocdv/html/help/fjc.shtml; Family Justice Center of Erie County, www.fjcsafe.org/.

For safety

You will need to help your client assess safety needs and anticipate what to expect from the abuser. Chapter 4, Assessing Risk and Lethality, provides more guidance. You may learn that your client is living with the abuser and that the abuse is ongoing. The client may tell you that the abuser will ignore an order of protection and may seriously hurt or kill the client. You will need to find out if the client wants to go into a domestic violence shelter or if there are family members or friends the client can move in with. Explore the possibility that an order of protection excluding the abuser from the home may protect the client's safety and help the client review safety precautions such as having his/her locks changed and installing window guards. If the client wants to remain in the home with the abuser, help the client understand the risks while exploring strategies to protect the client and the children's safety should the abuse resume (alerting a sympathetic neighbor, for example, and developing a plan for quick escape). Be sure that the client has important documents in a place the abuser does not have access to.

For counseling

The client may tell you that they feel so alone and isolated that they are thinking about going back to their abuser. Help the client locate groups for domestic violence victims that can help create a supportive community. Then assist the client by making an appropriate referral. The discussion below on Understanding the Effects of Trauma will assist you in supporting your client and recognizing how domestic violence may be having an impact on the client's day-to-day functioning and emotional life.

For therapy or psychiatric help

The client may tell you that they feel depressed and sometimes consider suicide, have recurrent nightmares, and are terrified to leave the home even though the client is certain the abuser does not know where the client lives. The client may have attacks of insomnia or intrusive flashbacks to incidents of abuse, all symptoms of Post-Traumatic Stress Disorder (discussed below). Urge the client to get psychological evaluation and treatment and assist them in locating appropriate resources. You may be thinking, "I'm a lawyer, not a social worker." The truth is that this kind of representation requires grappling with more than specifically legal issues. However, no one expects you to be a social worker or a psychologist. There are many multi-service domestic violence agencies throughout New York State that provide shelter, counseling, and other services. They can assist you with information and referrals to meet your client's needs.⁹

For emotional reassurance

Regardless of the specific circumstances, breaking away from the abuser is a difficult emotional task for your client, and the client will need emotional support from you. While that is not your main job, you need to be aware of psychological needs and meet them where possible. For example, at times your client is likely to cry, or be very upset or withdrawn while talking about their circumstances. Be prepared to offer comfort. This may involve simply listening compassionately to their distress. Often, simply listening is reassuring. It's a good idea to keep tissues on hand.

If you and your client are comfortable with this, it is, at times, appropriate to hold a client's hand reassuringly, or put an arm around their shoulder, though you must always ask permission before touching your client. Remember that, even though you are seeing your client professionally, there is always a human element to an interview about a domestic violence survivor's life. Be prepared to be

⁹Many resources can be found through the NYS Office for the Prevention of Domestic Violence website, abuser.opdv.ny.gov/help/fss/resource.html.

warm and caring in order to make your client comfortable, and later enable you to draw them out. Also, be prepared to hear that the client is seeing the abuser again or contemplating re-connecting. It's important to withhold judgment or shock and to return to a discussion around safety planning. To the extent your client trusts you and feels comfortable with you is the extent to which the client will be able and willing to tell you the important details you need to know.

The Interview

The First Meeting

The first meeting is a good opportunity to establish certain ground rules with your client and to assure the client that you are aware of and will abide by your obligations to them.

Be sure to explain to your client each and every part of the legal process, avoiding legalese whenever possible. Do not pay short shrift to their questions or suggest that the client is responsible for the abuse (e.g., "Why did you stay with them for ten years if they were so bad to you?"). You can help empower your client or you can inadvertently undermine their self-confidence and contribute to victim blaming. The client is here now, seeking your help.

Review the statement of the client's rights and responsibilities. Do not just hand the statement to read. Discuss it with them. Explain that they will make decisions about objectives and settlement, but that it is your job to make decisions about how best to achieve those goals.

Confidentiality

Explain that communications to you are protected by attorney-client privilege. Describe the privilege in simple lay terms: it means that everything they tell you is in confidence ("between you and me") and that you can disclose what they tell you only if you have first secured their permission. Be careful not to inadvertently disclose client confidences in conversations with the Attorney for the Child, child welfare workers, or forensic experts. If it would be advantageous to disclose certain information about your client to them and it is arguably confidential, get their permission first.

Inform your client that these principles of confidentiality will not apply when they talk with the forensic psychologist, the Attorney for the Child and his or her social worker, the judge's court attorney, the child welfare worker, or anyone other than you or someone from your office working for you. Anything the client communicates to this list of professionals will very likely be communicated to the judge in a report. In dealing with them the client will have to learn how to be an effective advocate for themselves and walk a fine line: the client must be able to convincingly and specifically describe the history of domestic violence without sounding embittered, angry, obsessive, or hostile to the abuser's relationship with their children.

Three Effective Techniques

During the interview, take detailed and accurate notes. Explain to your client that you are taking notes because what they are saying is very important and that you do not want to forget the details.

There are three types of interview techniques, and all three maybe necessary to get the information you need. They are (1)the open-ended interview,(2) the structured interview, and (3)the questionnaire.

In general you should start with an open-ended interview. Ask your client to tell their story in their own words. You may guide them somewhat by asking them to focus on certain questions (like the instant incident that precipitated the lawsuit). However, you want the client to have the opportunity to speak expansively, if they can. The purpose of this technique is to make the client comfortable, and allow them to build trust in you by telling you their story uninterrupted. Because your client may wander quite a bit, it is fine to bring them back with a gentle question or two. However, give them enough time

to unburden themselves emotionally. Once you feel that your client is comfortable with you, you can move to the second technique, the structured interview.

The purpose of the structured interview is to focus your client on concrete details so that they can give you a coherent account of each incident. It is often very difficult for domestic violence victims to remember incidents in detail, or even in chronological order. If you need to know what happened in a particular incident, ask the client to start talking about it. As they do, pick out a detail, like the time of day, and ask them what time it was, or what they were doing when it started (e.g. cooking dinner). The client will probably give you much more detail, and then if they become vague, pick out another detail (like what the client was wearing, or what room they were in) and ask about that. As you question the client about concrete detail, it helps the client remember concretely what was going on, and tell it in much more detail.

The third technique, the questionnaire, may not always be relevant. There are various questionnaires that document and rate abuse, usually for severity. Sometimes it can be helpful to give a questionnaire, and then go over it together. It can trigger memories, or focus conversation on how serious or dangerous the abuse really was.

Victims of domestic violence tend to minimize and normalize severe abuse, and this can be a neutral way of finding out about the details and extent of the abuse. However, sometimes it can be experienced as distancing. If it seems awkward or inappropriate to give your client a questionnaire, feel free to bypass this technique.

Obtaining the History of Domestic Violence and Gathering Evidence

Almost all cases require a detailed history of the domestic violence. You need to know (1) when each incident occurred; (2) in an order of protection case, whether the occurrences together or separately constitute family offenses; (3) what kinds of injuries the client sustained; (4) what the client's feelings and reactions were; and (5) what kind of corroborating evidence exists (hospital records, eye-witness accounts, police reports, etc.).

Documenting the Abuse and Preserving Evidence

Ask your client to bring to the first interview all court papers, police reports, hospital records, and appointment slips relevant to the domestic violence, and marriage and birth certificates. New York State Domestic Incident Reports (DIRs), issued by the police when they arrive on the scene of a domestic dispute, contain contemporaneous accounts of the incidents by both your client and the responding police officer and are especially useful.

Remember to be alert to the fact that you may have key evidence in your office that will not be around for your next interview: bruises, red marks, scratches, and torn or bloodied clothing. Preserve that evidence by taking photographs or asking your client to allow you to keep their bloodied, ripped shirt. Ask the client if the abuser damaged their property. If so, the client should document it either by saving the property or photographing it. Such evidence will probably enable you to meet your burden of proof at trial. It may also enhance the possibility of a favorable settlement.

If the client has the original receipts for property damaged, the client should provide them to you. They can be introduced into evidence in the dispositional phase of the family offense case when the client is pursuing restitution.

Ask the client about witnesses to the abuse. Even if the beatings happened in private, there may be neighbors who heard screams or friends who observed injuries afterward. The client may have made "excited utterances" to friends or coworkers. Get the names, addresses, and phone numbers of these individuals, and contact them as soon as possible before their memories fade.

Assessing the Children's Situation

Were the children present? What did they see or hear? How did they react? What changes in

their behavior did you observe? The impact of the domestic violence on your client's children will be relevant in almost every kind of representation — from family offense and custody to matrimonial and immigration. Find out what steps your client took to protect the children from the abuse, including by ending the relationship. It may be important to establish that your client knew the domestic violence was harmful to the children and tried to prevent them from being exposed to it.

Remember that until an Attorney for the Child has been appointed you can interview your client's children. Older, verbal children can be a source of valuable and reliable information, such as which parent they prefer to live with or what they observed in their home on a particular occasion. Be sure that you have your client's permission to interview the children and clear any questions you ask them with your client in advance. Also be sure that any questions you ask the children are "open-ended" and that you do not inadvertently lead.

Contested custody cases require that you know everything about your client's relationship with the children: the client's history of care-taking; the children's social, psychological, and intellectual development; the children's relationship with the abuser; the children's relationship with extended family members; even your client's and the abuser's life histories. Gathering this extensive information may require several interviews.

Meeting your client's children and observing the client's interaction with them can strengthen your representation, especially if there is an actual or potential custody or visitation case. Seeing the client with their children can give you information about their strengths as a parent that will make you a stronger advocate. Problems in the way your client relates to their children may become an issue in court. Swift and appropriate referrals to parenting groups or therapists are important to successful custody and visitation claims later on. See Chapter 15, *Litigating Custody and Visitation Cases*, for further discussion.

Ask your client how they discipline the children. Although the law prohibits only excessive corporal punishment, any corporal punishment that comes to the Attorney for the Child's or court's attention will reflect poorly on your client. If the client is disciplining the children inappropriately, refer them to a parenting skills course.

Knowing the Worst

Tell your client that the abuser will probably try to make them look bad in court. Explain that you need to know what the abuser is likely to say about the client in advance of the court date so that you can quickly respond to the allegations.

Ask her, "What is the worst thing the abuser is going to say about you?" If the client responds, "That I'm crazy or that I'm a drunk," you will need to ask specific questions. Ask the client if the client has had psychiatric hospitalizations or seen a therapist and if so, when, where, why, and for what period of time. Ask the client if they ever had a drug or alcohol problem. If so, find out when, what the substance was, the extent of the addiction, and whether the client was in a program.

Ask the client if their children have ever been removed or if there have been any child welfare investigations. Phrase the questions in such a way that your client understands that you are not judging them but are getting information necessary to help them.

Strengthening Your Client's Courtroom Presentation

Evaluate how your client will sound and appear to the judge, Attorney for the Child, and any forensic evaluators, and what kind of witness they will make at trial. How does the client tell their story? Is it consistent and believable or is the client's account vague, confused, and contradictory? Is the client easily rattled? Is the client affect appropriate or is the client blank and numb? Is the client so emotional that they cannot stop crying? Does the client dress appropriately?

By considering these issues you are not standing in judgment of your client; you are identifying the most effective strategy to help the client get the legal remedies they need. If the client would not

make a good witness, it might be best to try to settle the case. Or you might want to call an expert witness to explain the client's demeanor. Or you might be able to work with the client to help them learn to present themselves in a way that does justice to their case. One client laughed nervously every time she described the abuse she had suffered — behavior that led the Attorney for the Child and judge to doubt her account. When her lawyer gently pointed it out to her, she was able to control her nervous reaction and become an effective witness on the stand.

If court-appropriate clothing is a problem, consider referring the client to a program like Dress for Success, which offers domestic violence victims professional-looking clothing for appearances in court.¹⁰

Prepare the client for meetings with other professionals.

Don't let a client go into any court-related situation (e.g., a meeting with a child welfare caseworker or the Attorney for the Child's social worker) without knowing what to expect and what will be expected of them. Warn the client about possible pitfalls, such as openly expressing anger toward the abuser. Explain how important appearance and demeanor will be in court.

Understanding the Effects of Trauma

Longstanding abuse, especially abuse that follows earlier abuse, often causes psychological problems and trauma. It's important to begin with an understanding that these "problems" were likely valuable coping mechanisms and adaptive strengths at the time in which they were employed. Sometimes challenges arise during interviews that can make representation seem especially difficult. So often these behaviors are symptomatic of post-traumatic stress disorder and understanding that origin can help you as an advocate reach through that, and assist the client in moving forward.

Victims may also suffer from depression, and fears or paranoia. It is not surprising, for example, that a domestic violence victim might use alcohol and drugs to numb the pain and ward off feelings of despair. Zealous representation means understanding the worst, doing whatever is necessary to help the client overcome the worst, and then, if their problems surface in the proceeding, helping evaluators understand their source, the steps they are taking to overcome them, and the strengths they display in spite of them.

Post-Traumatic Stress Disorder (PTSD)

Domestic violence entails a series of traumas to the victim, which can cause Post-traumatic stress disorder (PTSD). PTSD is a diagnosis given to someone who has experienced a traumatic event and is having a normal reaction to it.¹¹ With domestic violence, the traumatic event (s) consists of the physical or sexual violence and/or types of coercive control that the abuser has inflicted on the victim. The reactions fall into four categories – (1) intrusive thoughts of the traumatic event(s), (2) avoidance of these thoughts, (3) negative alterations in cognition and mood and (4) physiological hyperarousal. Understanding that PTSD may be part of the picture is helpful in recognizing reactions your client may be having and may explain why the client has difficulty helping you put the information about their abuse in logical order.¹²

¹⁰ At new.york.dressforsuccess.org/.

¹¹ Judith Lew is Herman, *Trauma and Recovery* (1992). Herman compares the trauma of victims of domestic violence to that of combat veterans and survivors of political torture.

¹² Under the Diagnostic Statistical Manual (DSM) a person suffering from PTSD has experienced a traumatic event or events, and had various psycho- logical reactions to them, lasting over a period of time. The DSM lists all the possible diagnoses of mental disorders, with detailed descriptions of the relevant symptomatology for each recognized disorder. It is

For a victim of domestic violence, PTSD reactions might include intense flashbacks and/or nightmares, etc. as a way of dealing with these intense emotional experiences. The victim may block feelings, and thus appear very flat emotionally, and unresponsive. In addition, the client may have amnesia about some of the abuse, and difficulty remembering events in order or detail. The client may also have disconnected physical experiences of fear (racing heart, difficulty breathing), problems concentrating and significant sleep disturbance.

Your client may seem very subdued and give only sketchy accounts of what has happened to them. This may be due to their tendency to minimize. Minimization is a psychological way of getting through very difficult circumstances by understating their significance and impact. Minimization can be very effective in helping a person survive a traumatic event, like a house fire, by helping someone walk calmly to safety instead of panicking. Minimization can be a significant obstacle to understanding the gravity of a traumatic experience or how it affected the victim. If your client is minimizing, the client will tend to describe the horrific treatment they've received in understated terms, which will have the effect of making the listener think that there was little if any abuse.

Another psychological defense that trauma victims may employ is dissociation, a technique that enables them to put feelings about experiencing abuse to the side and completely ignore them while doing something else. Like minimization, dissociation can aid survival, helping a victim to function in the face of tremendous adversity. For example, disassociation helps a parent prepare dinner for their children, or change a diaper, even after having been brutally abused. Dissociation enables a rape victim to endure a sexual assault by experiencing it as though it is happening to someone else. While disassociation may help a victim survive a crisis, it has long-term negative psychological effects and can interfere with the client's ability to recall traumatic events that must be described in detail to access protection.

You may find that a client avoids staying on the subject during interviews. This may be the result of a thought disorder, a sign of a psychological problem. Or it may occur because your client wants to avoid painful subjects. It may also be the function of lack of experience with interviews. If your client does not respond to your questions, or continually gravitates to irrelevant topics, remind them to listen carefully and confine their answers to what you have asked. If the client continues to be unresponsive, gently cut them off and repeat the question.

The client may have memory gaps or amnesia. This often is a function of repression, another common psychological reaction to abuse. It also may be the result of the repetitive nature of the abuse, because it is hard to remember specifics of events that occur daily or weekly.

Ask your client to bring calendars, diaries, and any records the client keeps that will help them place events in time. Clients with children often can remember when events took place by thinking about how old their children were when they occurred. Help the client hone in on the probable date by asking them what season the incident occurred in, then help the client place it on or around a holiday or birthday during that season. Reassure the client that it is very common not to remember the date of events that occurred months or years ago. If the client does not keep a record of their activities, tell them that it is a good idea to begin to keep one so that you will know the exact date and time on which events occur, such as drop-offs and pick-ups for visitation or harassing phone calls.

Sometimes a client maybe excessively self-assertive. Relieved to be free of an oppressive abuser, the client may be determined not to fall under anyone's control again and resists guidance. The client may attempt to take charge of their situation, legal case, and the courtroom, but have little idea of how to go about this effectively. Clients struggling with issues of self-assertion may ignore your advice to keep quiet in court, reject your advice to comply with a court order, insist on strategies that are counterproductive, and become aggressive and even hostile when you give them bad news. Do not

engage, and do not take such behavior personally.

Trauma-Coerced Bonding: When Your Client Wants to Return to the Abuser

Some victims of domestic violence also experience “trauma-coerced bonding.”¹³ Some victims of abuse remain very attached to an abuser. A victim who is traumatically bonded will have very mixed feelings about leaving their abuser, or prosecuting the abuser for their wrongs against. This phenomenon, originally called “Stockholm Syndrome,”¹⁴ occurs when there are two factors present. One, the abuser has to have significant power over the victim. This is the case in domestic violence. Second, the abuser has to be at times punishing, but also at times loving and caring towards the victim. The victim is weakened psychologically by the abuse, and comes to see the abuser more and more as the only person who can help or harm them. Working with this client may seem challenging. The client may be very conflicted about leaving, and may backtrack at times. This client needs a great deal of emotional support, and gentle reminders of the negatives of their relationship with the abuser when they are feeling that they must return.

Like PTSD, trauma-coerced bonding is the natural outcome of the way in which your client has been mistreated — it is not reflective of their character or underlying mental fortitude. The other chapters in this book addressing topics such as spousal and child support, workplace rights, immigration remedies, intimate partner sexual assault, public benefits and housing, can help you, as the victim’s attorney, identify specific solutions for challenges that may be underlying some of your client’s extreme fear and contributing to their perception that the only place in the world is with the abuser. While pragmatic solutions will not always free your client from deeply private conflict, offering as many paths to safety and independence as you can may help shift their perspective, even if it takes a while. For some clients, leaving is a longer process and you may only see the beginning of it, not the final outcome. Your help is still an essential stepping-stone on their path.

Vicarious Trauma

Although your client is the one who has been traumatized by experiences with the abuser, hearing about it in detail, and identifying with your client whom you are trying to help, leads to a certain amount of vicarious trauma. In other words, the experience of hearing about your client’s trauma has the effect of causing you secondary trauma.

You should anticipate that it will be upsetting to hear about your client’s experiences. It is important to be aware of this phenomenon, so that you do not unconsciously keep your client from talking in to avoid upsetting yourself. The best way to counteract this tendency is to maintain awareness that you are likely to get upset. It is important to allow yourself to experience whatever upset you feel, and to seek support for yourself when you do. If you shut this out, you are more likely to let your client avoid important details, and you are also more likely to engage in victim blaming.

It is a natural tendency to distance yourself from the traumatic circumstances of your client’s situation. This is because most of us like to feel that these horrible events would never happen to us. We like to feel that we would have acted differently, protected ourselves better. Because of this tendency, you may find yourself blaming your client for not defending herself or for not leaving sooner. To avoid acting on these self-protective, but ultimately destructive impulses in ourselves, it is important to seek support from other lawyers and from professionals who are qualified to handle these issues.

¹³ Chitra Raghavan & Kendra Doychak, Trauma-coerced Bonding and Victims of Sex Trafficking: Where do we go from here? 17:2 International Journal of Emergency Mental Health and Human Resilience 223 (2015).

¹⁴ Donald Dutton, Ph.D. & Susan Painter, Emotional attachments in abusive relationships: A test of traumatic bonding theory, 8:2 Violence and Victims 105 (1993)

Conclusion

The best attorney-client relationships are built on trust and teamwork. When this becomes the dynamic that informs your relationship with your client, there are mutual benefits. Not only will your task be easier and more rewarding, but your client's encounter with the legal system will be a positive experience — one that affirms the client's value and equips them with the tools the client needs to build a safe and independent life. The interview serves as the foundation of all that will follow.