

# NEW YORK CIVIL PROTECTION ORDERS

Survivors across the country seek safety through civil protection orders. Courts use these vital orders to issue stay away orders, or order an abuser pay medical bills, and even make temporary custody decisions. The remedies are important, but jurisdictions often have several types of orders and the distinctions are not always clear. This resource provides a brief overview of the different types of civil protection orders in each jurisdiction, answering vital questions such as: who can apply; and who can be restrained? The orders included in this resource are limited to those where a survivor can apply themselves, other protective measures may exist in your jurisdiction—reach out to VRLC’s TA team if you have questions!

In New York, there are 2 types of civil protection orders:

- ☐ **Orders of Protection** are available for individuals seeking protection from domestic violence committed by a household member (§ 842 Order of Protection; § 812 Procedures for family offense proceedings).
- ☐ **Extreme Risk Protection Orders** may be sought by a person with a specific relationship to an individual who poses a serious threat of physical harm to themselves or someone else (NY CPLR § 6340).

# ORDER OF PROTECTION

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| <b>Who can apply?</b>         | <p>An individual who is a victim of <b>domestic violence</b> can petition the court for an order of protection.<br/> <i>N.Y. Fam. Ct. Act § 812(1).</i></p> <p><b>Domestic violence</b> includes:</p> <ul style="list-style-type: none"> <li>• Disorderly conduct;</li> <li>• Harassment or aggravated harassment;</li> <li>• Stalking or menacing;</li> <li>• Reckless endangerment;</li> <li>• Assault or attempted assault;</li> <li>• Criminal mischief;</li> <li>• Sexual misconduct, sex abuse, or forcible touching;</li> <li>• Strangulation or criminal obstruction of breathing or blood circulation;</li> <li>• Identity theft;</li> <li>• Grand larceny; or</li> <li>• Certain types of coercion</li> </ul> <p><i>N.Y. Fam. Ct. Act § 812(1).</i></p> |
| <b>Can minors apply?</b>      | <p>The law does not specify whether minors can apply for an Order of Protection.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Who can be restrained?</b> | <p>A respondent must be a <b>family or household member</b>.<br/> <i>N.Y. Fam. Ct. Act § 812(1).</i></p> <p><b>Family or household member</b> means:</p> <ul style="list-style-type: none"> <li>• Those related by blood or marriage;</li> <li>• Spouses or former spouses;</li> </ul> <p><i>continued on next page</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                       |

## ORDER OF PROTECTION

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| <b>Who can be restrained?</b>                  | <ul style="list-style-type: none"> <li>• Those with a child in common;</li> <li>• Those currently or previously in an intimate relationship; or</li> <li>• The children of those in an intimate relationship.</li> </ul> <p><i>N.Y. Fam. Ct. Act § 812(1)(a-f).</i></p> <p>To determine whether individuals share an intimate relationship, the court may consider:</p> <ul style="list-style-type: none"> <li>• The nature and type of relationship;</li> <li>• Frequency of interaction; and</li> <li>• Duration of the relationship.</li> </ul> <p><i>N.Y. Fam. Ct. Act § 812(1)(e).</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>What types of relief may a court order?</b> | <p>An order can include any of the following provisions:</p> <ul style="list-style-type: none"> <li>• Prohibit respondent from contacting petitioner;</li> <li>• Require respondent stay away from petitioner or their children;</li> <li>• Require respondent stay away from petitioner's home, place of work, or school;</li> <li>• Prohibit respondent from engaging in harmful conduct, including any of the acts of domestic violence listed above;</li> <li>• Detail temporary child support or visitation schedules;</li> <li>• Order temporary child or spousal support;</li> <li>• Prohibit respondent from acts that create an unreasonable risk to the health, safety, or welfare of a child;</li> <li>• Restrain respondent from harming or interfering with pets or companion animals;</li> <li>• Require respondent pay reasonable attorney's fees;</li> <li>• Require respondent attend a domestic violence education program and pay the costs thereof;</li> </ul> <p style="text-align: right;"><i>continued on next page</i></p> |

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| <b>What types of relief may a court order?</b>    | <ul style="list-style-type: none"> <li>• Require respondent pay for petitioner's medical care that resulted from the acts of violence;</li> <li>• Require respondent return any of petitioner's specified identification documents;</li> <li>• Prohibit respondent from controlling any devices connected to the petitioner's home;</li> <li>• Prohibit respondent from possessing or obtaining firearms, and require respondent to turn over firearms they own (subject to additional restrictions); and</li> <li>• Any other conditions necessary to further the purpose of the order.</li> </ul> <p><i>N.Y. Fam. Ct. Act § 842(a-1); N.Y. Fam. Ct. Act § 842-A .</i></p> |
| <b>How long does the order last?</b>              | <p>A temporary order of protection only lasts until the next court date but can be extended until the case is resolved.</p> <p>A final order of protection can last for up to 2 years; under aggravating circumstances can last up to 5 years.</p> <p><i>N.Y. Fam. Ct. Act § 842.</i></p>                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Can the order be renewed?</b>                  | <p>A temporary order of protection can be renewed until a decision is made on a final order.</p> <p>A final order can be reconsidered and modified for good cause.</p> <p><i>N.Y. Fam. Ct. Act § 844.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Is a hearing with the respondent required?</b> | <p>A temporary order can be granted ex parte without a hearing. This order is in effect until a final hearing, of which the respondent must have notice and an opportunity to appear.</p> <p><i>N.Y. Fam. Ct. Act § 841.</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                            |

# EXTREME RISK PROTECTION ORDER

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| <b>Who can apply?</b>         | <p>Any of the following can petition for an Extreme Risk Protection Order to prevent another from using a firearm to hurt themselves or others:</p> <ul style="list-style-type: none"> <li>• A police officer;</li> <li>• A district attorney;</li> <li>• <b>Family or household member</b> of the respondent;</li> <li>• Principal or other chief school officer of any school in which the respondent is currently enrolled or was enrolled in the past 6 months;</li> <li>• Certain licensed health care professionals or mental health professionals, including licensed social workers, who have treated respondent in the preceding 6 months.</li> </ul> <p><i>NY CPLR § 6340(2).</i></p> <p><b>Family or household member</b> means:</p> <ul style="list-style-type: none"> <li>• Those related by blood or marriage;</li> <li>• Current or former spouses;</li> <li>• Those with a child in common;</li> <li>• Those who live in the same household, continually or at regular intervals;</li> <li>• Those in an intimate relationship; or</li> <li>• Any other category of individuals deemed to be a victim of domestic violence as defined by law.</li> </ul> <p><i>NY SOS 55 § 459-a(2).</i></p> |
| <b>Can minors apply?</b>      | <p>Yes. The law does not state that a household member must be 18 years of age or older.</p> <p><i>NY CPLR § 6340(2)</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Who can be restrained?</b> | <p>A person at high risk of using a firearm, rifle, or shotgun to hurt themselves or other people.</p> <p><i>NY CPLR § 6340(3)</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |

## EXTREME RISK PROTECTION ORDER

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| <p><b>What types of relief may a court order?</b></p> | <p>A final order includes the following provisions:</p> <ul style="list-style-type: none"> <li>• Prohibit respondent from possessing a firearm, rifle, or shotgun;</li> <li>• Prohibit respondent from buying, attempting to buy, or otherwise obtaining a firearm, rifle, or shotgun; and</li> <li>• Require respondent turn over any firearms, rifles, or shotguns they own or possess;</li> <li>• Temporarily suspend respondent's existing firearms license and order the respondent temporarily ineligible for such a license.</li> </ul> <p><i>NY CPLR § 6340(1); NY CPLR § 6343(3)(b).</i></p> <p>To determine whether to grant an order, the court should consider any relevant factors, including the following acts by respondent:</p> <ul style="list-style-type: none"> <li>• Whether there had been threats or acts of violence;</li> <li>• Violation of an order of protection;</li> <li>• Pending charges or convictions for offenses involving a weapon;</li> <li>• Reckless use or display of a firearm;</li> <li>• History of violations of an extreme risk protection order;</li> <li>• Evidence of recent or ongoing use of alcohol or other controlled substance; or</li> <li>• Recent acquisition of a firearm, ammunition, or other dangerous or deadly weapon;</li> </ul> <p>The court should also consider how much time has passed since the occurrence of these acts and the age of the respondent.</p> <p><i>NY CPLR § 6342(2).</i></p> |
| <p><b>How long does the order last?</b></p>           | <p>A temporary order can last through a hearing for a final order. A hearing should take place within 3-6 days of service of the temporary order on respondent.</p> <p><i>NY CPLR § 6342(4)(d)(ii).</i></p> <p>A final order can last up to 1 year.</p> <p><i>NY CPLR § 6343(3)(c).</i></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

## EXTREME RISK PROTECTION ORDER

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| <b>Can the order be renewed?</b>                  | The order can be renewed for up to 1 year.<br><i>NY CPLR § 6345.</i>                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Is a hearing with the respondent required?</b> | <p>A hearing with the respondent is not required for the court to issue a temporary order.<br/><i>NY CPLR § 6342(1).</i></p> <p>A hearing with the respondent is required for the issuance of the final order within 3-6 days after the issuance of the temporary order. If a temporary order was not granted, the hearing should occur within 10 days of service of the application on the respondent.<br/><i>NY CPLR § 6342(4)(d)(ii); NY CPLR § 6342(5).</i></p> |

## HOW TO APPLY, ORDERS OF PROTECTION

A petition should be filed in the county where the referenced acts occurred, or in which the petitioner or respondent live.

Forms for all New York Family Courts, including Temporary Order of Protection and information for victims of domestic violence can be found at <https://ww2.nycourts.gov/forms/familycourt/domesticviolence.shtml>

## HOW TO APPLY, EXTREME RISK PROTECTION ORDERS

<https://www.nycourts.gov/help/safety-violence/applying-extreme-risk-protection-order-erpo>

The completed ERPO application, Request for Judicial Information form, and any supporting documents should be filed at the Supreme Court in the county where the respondent lives.

SCAN ME!



For specific questions about how to use this guide, or if you have any other questions, VRLC is here to help!

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