

State of New York
Office of the Attorney General

DOMESTIC VIOLENCE & SEXUAL ASSAULT:

Rights & Resources



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Did You Know

According to the U.S. Department of Justice, in America:

- A woman is sexually assaulted every two minutes.
- Approximately 28% of female sexual assault victims are raped by husbands or boyfriends, 35% by acquaintances, and 5% by other relatives.
- Nearly one-third of murdered women were killed by their current or former partner.
- Almost half of reported domestic violence assaults result in serious bodily injury.

According to the New York State Coalition Against Sexual Assault, in New York:

- Domestic violence accounted for 133 homicides in 2006 alone.
- Children ages 17 and under are victims of about 70% of all reported sexual assaults.
- Domestic violence accounted for the death of 28 children in 2006.

INTRODUCTION

Domestic violence and sexual assault affect the lives and compromise the safety of thousands of New Yorkers, with tragic, destructive, and sometimes even fatal results. Experiencing violence at the hands of an intimate partner or family member can be frightening and degrading. Thanks to the work of governmental and non governmental advocates and survivors progress has been made in securing justice and protections for victims of family and sexual violence. More information and resources are available for victims of abuse than ever before. Despite these improvements, however, deciding to seek assistance, exercise one's rights, obtain an order of protection, or leave an abusive relationship can be difficult and have significant consequences. This guide is intended to raise awareness and help victims, their families, and advocates enhance safety, learn about their rights under New York law, and obtain access to services in New York State.

WHAT IS DOMESTIC VIOLENCE?

Domestic violence is any pattern of coercive tactics, which can include physical, psychological, sexual, economic, or emotional abuse, perpetuated by an intimate partner or family member, with the goal of establishing and maintaining control over the victim. This abuse can come from any family or household member, including a spouse or ex-spouse, parent, child, stepchild, any individual who has ever shared a dwelling with the victim, any individual with a child in common with the victim, and anyone who has ever dated or been engaged to the victim. Domestic violence crosses all ethnic, racial, socioeconomic, and sexual orientation boundaries.

STEPS TO TAKE IF YOU ARE IN AN ABUSIVE RELATIONSHIP

TAKE IT SERIOUSLY AND SEEK ASSISTANCE

- Talk to someone you trust, such as a parent, sibling, friend, neighbor, clergy person, or counselor. You are not alone. Develop a code word that you can use with your friends or family to alert them to call for assistance.
- Get help from your neighbors. Ask them to call the police any time they see the abuser at your place.
- Call for help with restraining orders, safety planning, education, and other help. Local domestic violence and crime victim programs can provide not only key information but also vital services. Program advocates, for example, can often accompany you to court, to the police, or to social services agencies. They are also a key source for emotional and practical support.
- Create a safety plan identifying options to reduce your risk. A domestic violence advocate can help you with this. Revise the plan as new developments occur, because batterers sometimes become more violent during times of separation. If you are planning to leave an abuser, you should create a special separation safety plan. Keep your plan in a secure location where your abuser won't find it.
- Practice an escape plan for emergencies.
- If you stay in your home and your abusive partner leaves, change your locks. As soon as possible get an unlisted phone number, establish utility services in your name and open your own bank account.
- Take photos and or document any injuries. Keep a journal of incidents and save threatening phone messages.

IF YOU ARE IN IMMEDIATE DANGER, CALL THE POLICE

- Call 911 right away for help in case of emergency. When police arrive, get the officers' names and badge numbers. Provide details of the assault and show them any injuries or property damage. Inform them about other violent incidents and present any court documents, including orders of protection. For the police to make an arrest, they must have probable cause to believe that a crime was committed. In the event that a "family offense" has occurred, New York State law requires that an arrest be made in certain circumstances (e.g. in the event of a felony crime or a violation of the "stay away" provisions in an order of protection). A family offense occurs where the victim and the abuser are members of the same family

or household, related by blood or marriage (including a former spouse), have a child in common, or have been or are in an intimate relationship of any kind. If a misdemeanor is committed, the police may make an arrest though you have a right to object. Where there is reason to believe that more than one family member committed a misdemeanor, the officer is required to identify the primary physical aggressor.

- Call the police even if you are an undocumented alien who has been abused by a spouse or ex-spouse who is a U.S. citizen or a permanent resident. The law offers protection to all individuals who are victims of criminal acts, including victims of domestic violence and sexual assault.
- Request that the investigating police officer or Assistant District Attorney help provide safety for you and your family. The officer can assist you with arrangements to go to a domestic violence program or shelter, the home of a family member or friend, or another place of safety.
- Request that the officer assist in obtaining necessary medical treatment for you and your children. Keep in mind that medical records can help if you go to court.
- Request a free copy of the incident report from the law enforcement agency. Every time the police respond, they complete a Domestic Violence Incident Report, even if an arrest is not made. In addition to a victims' rights notice, the report should include the officers' names and badge numbers so that you can contact them with follow-up questions. Make sure to sign the report at the time the officer is writing the report.

SECURE PROTECTION FOR YOU AND YOUR CHILDREN

- To stop the abuse and end family disruption, you may secure an order of protection in either Criminal Court or Family Court. An order of protection is issued by the court and can set limits on the abuser's behavior. It may, for example, direct the offender to stay away from you and your children, or it might require compensation to you for your medical care, property damage, and attorney fees. While an order cannot guarantee your safety, it can give you some protection. Your abuser can be arrested for violating the conditions in the order. Upon a showing of good cause, you can ask for a temporary order of protection against your abuser the day the petition is filed or the next day the court is in session. A permanent order of protection may be issued by the court after a dispositional hearing. The duration of your order will depend upon circumstances and whether the order is issued by the Family or Criminal Court. The term can be between one year and five years, depending on the nature of the offense and any aggravating circumstances.
- If you are married to, divorced from, related to, have ever dated, or have a child

with the person who committed the violent act against you, you may proceed in either Family Court or Criminal Court. If Family Court is not in session, you may go to Criminal Court to obtain an order of protection. The court may subsequently transfer the matter to Family Court for further action.

- If you file a petition for an order of protection in Family Court, the court may appoint a lawyer at no cost to you if you cannot afford representation. Family Court judges also may decide issues related to custody, child support, and visitation. In custody and visitation determinations, the court must first consider the child's best interests.
- If you are not married, are not related to, do not have children with, or have never been in an intimate relationship with the person who hurt you, you will need to proceed in your local Criminal Court with the intervention of the District Attorney. In a criminal proceeding, the offender will be prosecuted and may face criminal conviction, incarceration, and probation, imposition of fines and/or issuance of a permanent order of protection.
- When applying for a temporary or permanent order of protection, you may request that your address be kept confidential and designate a third party or clerk for the court to serve as an agent for process when delivering the order to the offender.
- When the court issues an order of protection, or if the abuser moves out, change the locks on your door to maximize safety for you and your children.
- Teach your children safety skills, such as how to call 911 or contact other family members. They should always know what to do and where to go if they see the abuser or in case of emergency. Also teach them to give your address and phone number to the police if necessary.
- If a court issues an order of protection, or if the offender violates such an order, the court may suspend or revoke a firearm license possessed by your abuser, order the abuser ineligible for such a license, and order the immediate surrender of any firearms that the abuser owns or possesses.
- Keep copies of the order at home, at work and on your person, and keep any custody orders at your child's school. If you do not have a physical copy of the order of protection, the police have access to a court database that should reflect it. Also, retain your District Attorney or lawyer's number as they should have a copy of the order as well.
- If your abuser violates an order of protection, you may return to the court that issued it for further relief.

- Upon finding that the abuser violated the order and was therefore in contempt of court, a Family Court judge may modify or issue a new order of protection, impose or order the forfeiture of bail, order the offender to pay reasonable and necessary counsel fees, and/or sentence the offender to up to six months in jail. Alternatively, the Family Court judge may make a finding against your batterer for contempt of court and refer the case to the District Attorney for prosecution in Criminal Court.
- If the Criminal Court judge finds that the abuser violated the order and was in contempt of court, a Criminal Court judge may release the offender on bail, restore the case to the court calendar and commit the offender to custody, or impose probation or imprisonment.

SEEK COMPENSATION AND OTHER SUPPORT

- You may obtain compensation and support from a variety of sources.
- You may apply for compensation from the New York State Crime Victims Board (CVB) for out-of-pocket expenses and any loss of earnings or support incurred as a result of a crime, as long as a report or complaint was filed with local law enforcement or a state agency specified by law. If you do qualify, you will not have to reimburse CVB for its awards to you. CVB may also provide compensation for moving and other expenses incurred while at a shelter for battered spouses, partners and children. Victims of stalking and harassment who have not been physically injured may be eligible for an award to cover some out-of-pocket expenses resulting from the crime.
- Ask the court to order restitution: compensation to be paid by the offender to the victim for out-of-pocket losses caused by the crime.
- Get counseling from a domestic violence center, crime victim program, a women's center, or a mental health agency where they are familiar with issues relevant to you and potential consequences.
- Apply for unemployment insurance benefits if you leave your job because of domestic violence.
- Notify your employer if you need time off to testify in court or consult with the District Attorney. Under the law, a victim cannot be penalized or fired for being absent from work for exercising legal rights in a family offense proceeding, as long as the employer receives notice.
- You can vote by special ballot at the board of elections as early as one week before Election Day. To do so, you must submit to the local board a statement affirming

that you are a victim of domestic violence and have been forced to leave home because of such mistreatment.

- If an insurance company discriminates against you because you are a victim of domestic violence, you can file a complaint with the Superintendent of the New York State Department of Insurance. Some examples of this kind of discrimination include refusal to issue or renew, denial or cancellation of an insurance policy or requirement of a greater premium or payment.
- Consider both your civil and criminal remedies.

WHAT IS SEXUAL ASSAULT?

Sexual assault is any non-consensual sexual act or conduct by one or more persons upon another, including rape, sodomy, or any unwanted touching of the sexual parts of the body. Sexual assault is a crime.

CONSEQUENCES OF SEXUAL ASSAULT

According to the World Health Organization (WHO), Sexual Assault victims are more likely:

- To commit suicide
- To suffer from depression
- To suffer from post-traumatic stress disorder (PTSD)

STEPS TO TAKE IF YOU ARE A VICTIM OF SEXUAL ASSAULT SECURE ASSISTANCE AND INFORMATION

- Obtain information from the police about the nearest rape crisis center and available treatment. Find out about preservation of evidence like your clothing.
- Have a trained sexual assault advocate present during the forensic exam.
- Obtain information concerning emergency contraception. If you request it, you can receive such medication from the hospital providing emergency treatment, unless it is medically inadvisable.
- Request a free copy of the police report.
- Seek counseling even if you think you may not need it. Sexual assault is traumatic, seek help from a rape crisis or crime victim program, a women's center or a mental

health agency where they are familiar with sexual violence issues.

- You may refuse to submit to a polygraph or psychological stress evaluator examination during the investigation and prosecution of the sexual offense. Absolutely no one, including a District Attorney, police officer or employee of a law enforcement agency can require you to submit to this kind of testing.
- Check with the Sex Offender Registry about the status of a particular offender. Call the special Megan's Law telephone number listed in the back of this guide, and provide the offender's name and at least one of the following: street address and apartment number, driver's license number, Social Security number, or birth date. You also can obtain information from a Subdirectory of High-Risk Sex Offenders for free. It will include the name, physical description, address, and photograph of the sex offender. Additional information including a description of the crime of conviction, modus of operation, type of victim targeted, and any special conditions imposed on the offender are also provided. The Subdirectory is available at your local police agency or via the Internet at the Division of Criminal Justice Service's website: www.criminaljustice.state.ny.us

SEEK PROTECTION AND PARTICIPATION

- Ensure your privacy. Request a private setting when the District Attorney or police interview you. A rape crisis counselor, social worker, or psychologist may be present during the interview. In certain circumstances, a parent or guardian may also be there.

Guard your confidentiality. Generally, your communications or records of service with a rape crisis counselor are privileged, and the counselor is not required to disclose such communications. A rape crisis counselor may disclose confidential communication, however, if you authorize it or waive the privilege. Whenever disclosure of a rape crisis counselor-client communication is sought on the grounds that the privilege has been waived or that the disclosure is required in a criminal case, the party seeking disclosure must file a written request with the court. The court will examine the communications outside the presence of the jury and counsel for all parties to determine whether disclosure of any portion of the communication is required.

- If a public employee has documents that identify you as a victim, these documents are usually not made available for public inspection. Particular individuals, however, may be entitled to receive such information. People with this privilege may include a defendant charged with a crime against the victim, the defendant's counsel, those investigating and prosecuting the offense, and any necessary witness. Additionally, any person who demonstrates to the satisfaction of the court that good cause exists may also receive the information. Upon disclosure, the court

may order restrictions to protect your identity.

- During trial, the “Rape Shield Law” generally prevents defense attorneys from delving into your sexual history when irrelevant to the case and unduly prejudicial or inflammatory. Similarly, evidence regarding your appearance and clothes at the time of the sexual assault may only be admitted if relevant.
- Present your statement about the impact of the crime to the Department of Probation officials preparing any pre-sentencing investigation report. Without first receiving this report, a judge cannot sentence the offender to probation or to more than 90 days of incarceration.
- While you can always seek testing for Human Immunodeficiency Virus (HIV) on your own, you can also request that the court order a person convicted of a felony sexual offense to submit to HIV testing. Test results are not necessarily completed prior to sentencing, but when they are, they are only released to the offender and the victim.
- Speak at the sentencing of your offender. Under the law, a victim has the right to make a statement at a felony sentencing if the court has received prior notification.
- If the offender is placed in the custody of the State Department of Correctional Services, you can submit an Impact Statement to the Division of Parole describing the extent of your injury, out-of-pocket expenses, and other economic losses resulting from the crime.

IMMIGRATION LAW AND RELIEF FOR VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT

A victim of sexual assault or domestic violence who is a non-citizen or an undocumented alien may be eligible for a U-visa or T-Visa. The victim may also be eligible to file a VAWA self petition if married to a U.S. citizen or lawful permanent resident. Undocumented aliens who are victims of domestic violence or sexual assault face unique obstacles in reporting violent crime perpetrated against them by their spouses, relatives or non relatives. Due to some eligibility factors for the U & T Visas, it is important that you contact your local domestic violence organization for assistance. This brochure provides a list of organizations that may provide assistance on general immigration questions and relief.

WHAT IS A U-VISA?

- The U-visa and T-visa established by the Victims of Trafficking and Violence Protection Act of 2000 provide immigration status to non-citizen crime victims who have:
- Suffered substantial physical or mental abuse from a criminal activity, such as

Victim Information and Notification Everyday

VINE is a 24-hour hotline providing information about convicted felony offenders in the custody of the NYS and NYC Department of Corrections Systems.....1-888-VINE-4NY

For information on local programs, consult you local police authorities, District Attorney’s Office and the telephone directory.

If you need immediate help, call your local police agency, or dial “911” if you have that service locally.

ONLINE RESOURCES

The following is a list of some organizations that provide online resources for victims of domestic violence and sexual assault in New York State:

Asian-American Legal Defense and Education Fund
<http://www.aaldef.org>

African Hope Committee Inc.
<http://www.afriquehope.org>

Catholic Charities Archdiocese of New York Immigration Services
<http://www.catholiccharitiesny.org/>

National Coalition Against Domestic Violence
<http://www.ncadv.org/>

New York City Anti-Violence Project (dedicated to serving lesbian, gay, bisexual, transgender, queer, and HIV-affected communities)
<http://www.avp.org>

New York State Coalition Against Domestic Violence
<http://www.nyscadv.org/>

New York State Coalition Against Sexual Assault
<http://www.nyscasa.org/>

New York Asian Women Center
<http://www.nyawc.org/>

Family Violence Prevention Fund
<http://endabuse.org/>

KEY STATUTORY REFERENCES ¹

Assistance from the police, Retrieval of Belongings and Medical Treatment.....

Criminal Procedure Law §530.11
Family Court Act § 812

Confidentiality for Victims of Domestic Violence.....

Family Court Act §154-b
Domestic Relations Law §254

Confidentiality for Victims of Sexual Assault.....

Civil Practice Law and Rules §§ 4510
Criminal Procedure Law §§ 60.42, 60.48, 60.76
Civil Rights Law §50-b

Crime Victims Board Compensation.....
Direct Forensic Payment

Executive Law § 631

Custody and Visitation.....

Domestic Relations Law §240
Family Court Act §§812, 821-a

Divorce, Separation or Annulment, Order of Protection.....

Domestic Relations Law §§240, 252

Emergency Treatment of Rape Survivors.....

Public Health Law §2805-p

Enforcement of an Out-of –State Order of Protection.....

Executive Law §221-a
Criminal Procedure Law §§140.10, 530.11
Domestic Relations Law §252

HIV Testing.....

Criminal Procedure Law §390.15
Family Court Act §347.1
Public Health Law §2785-a

¹ This listing is not an exhaustive index of the statutes that pertain to domestic violence and sexual assault; it provides only an overview of significant statutes. For more information, consult counsel.

Information from Police Officers, Fair Treatment Standards.....

Executive Law §§641, 642, 646-a
Criminal Procedure Law §530.11
Family Court Act §812

Insurance Discrimination, Domestic Violence.....

Insurance Law §2612

Legal Representation.....

Criminal Procedure Law §530.11
Family Court Act §821-a

Megan’s Law Information.....

Correction Law §168-p 168-q

Notification of Certain Decisions by the District Attorney.....

Criminal Procedure Law §440.50
Executive Law §641

Order of Protection, Family Offense Proceedings, Criminal Court.....

Criminal Procedure Law §§140.10, 530.11, 530.12

Order of Protection, Family Offense Proceedings, Family Court.....

*Family Court Act §§153-b, 153-c, 154-b, 154-c, 154-d, 155, 551, 812, 780,
813, 814-a, 821-a, 828, 832, 833, 835, 841, 842, 846, 846-a, 847*

Police/Incident Report.....

Executive Law §646
Criminal Procedure Law §530.11
Family Court Act §812

Polygraph or Psychological Stress Evaluator Examination.....

Criminal Procedure Law §160.45

Private Setting and Support for Victims of Sexual Assault During Interview.....

Executive Law §642

Protection from Dual Arrest, Primary Aggressor.....

Criminal Procedure Law §140.10

Protection from Firearm.....

Family Court Act §§842-a, 846-a
Domestic Relations Law §§240, 252
Criminal Procedure Law §530.14

Registration of an Order of Protection.....

Criminal Procedure Law §§530.11, 530.13
Family Court Act §§155, 814-a
Domestic Relations Law §240
Executive Law §221-a

Restitution.....

Executive Law §647
Penal Law §60.27
Criminal Procedure Law §420.10

Services for Victims of Human Trafficking.....

Social Services Law § 483-aa, 483-bb, 483-cc, 483-dd
Penal Law § 230.34

Sexual Assault Advocate.....

Public Health Law §2805-i

Sexual Assault Evidence, Hospital.....

Public Health Law §2805-I

Shelter and Non-residential Services for Victims of Domestic Violence.....

Social Services Law §§131-u, 459-c

Statement at Time of Sentencing.....

Criminal Procedure Law §380.50

Unemployment Insurance Benefits, Domestic Violence.....

Labor Law §§10-a, 593

Venue Information.....

Family Court Act §§154-d, 828
Criminal Procedure Law §530.11
Judiciary Law §216

Venue Impact Statement.....

Criminal Procedure Law §§390, 390.50
Executive Law §259-i

Voting Accommodations for Victims of Domestic Violence.....

Election Law §11-306

Workplace Protections for Victims.....

Penal Law §215.14

