

Orders of Protection



This guide answers questions that you may have if an order of protection has been filed against you. The information in this guide is also helpful for those people who are protected by the order. It is important to understand what it means to have an order of protection against you and what will happen if you do not follow all of the rules.

What is an order of protection?

An **order of protection**, or **OP**, is a paper from a judge that makes rules about contact between people.



How does someone get an order of protection in Family Court?

To get an order of protection in Family Court, the person who wants the order of protection starts a case by filing a **Family Offense Petition** in the petition room. A **petition** (pe-TI-shun) is a written request. The person filing the petition is called the **petitioner** (pe-TI-shun-er). A family offense petition asks a judge to grant an order of protection. The person the case is against is called the **respondent** (re-SPON-dent). The petition tells the judge and the respondent what the respondent did and what the petitioner wants.

Who can get an order of protection in Family Court?

Family Court hears cases involving children and families. To get an order of protection in Family Court, the petitioner's relationship to the respondent must fall into one of these four categories:

- Current or former spouse
- Someone you are related to by blood or adoption
- Someone you have a child with (even if you never married to or never lived with the person)
- Someone with whom you are or have been in an "intimate relationship"

When do orders of protection start?

Sometimes in Family Court the petitioner will receive a temporary order of protection (or TOP) the same day that the petition is filed. The temporary order of protection is not active until it is served on the respondent. For more information on service, please see the LIFT guide, "Serving Court Papers."

A Criminal Court temporary order of protection starts immediately, right when the judge orders it.

A temporary order of protection can last until your next court date. Sometimes the judge picks the date that it will end. This date is printed on the order.

How does someone get an order of protection in Criminal Court?

To get an order of protection in Criminal Court, there needs to be a criminal case. Criminal cases usually start after an arrest is made. The person who is arrested is called a **defendant**. As part of the case, the **prosecutor** (PROSS-e-kyu-tor) can ask the judge to give an order of protection against the defendant to protect the **complaining witness**. The complaining witness is the person who a crime may have been committed against. This person is also sometimes called the crime victim. The prosecutor takes the government's side against the defendant. The prosecutor is called an **Assistant District Attorney** or **ADA**.

What should I bring to court?

- Documentation that shows your Social Security or disability benefits, worker's compensation, unemployment benefits, veteran's benefits, pension or retirement funds investments, fellowships, or annuities.
- Information about any Medicaid, Home Relief, or Food Stamps you receive, such as a Budget Letter.
- Proof of expenses, such as FICA and New York City or Yonkers taxes. These expenses will be subtracted from your income before the court determines your support payments.
- If you have been ordered to pay support for another child, bring a copy of the order and proof of the payments you have made. Some ways to prove that you have paid are receipts for money orders, canceled checks, or pay stubs showing that the support has been removed.

What if I work “off the books”?

If you work “off the books” or do not receive regular paychecks, the court may base your income on one of the following:

- What you earned in the past
- What the court thinks you could earn
- What the standard of living is in your household

The amount the court decides on is called an **imputed income**. The court then uses this imputed income to decide how much child support you have to pay.

What if I miss my court date?



If you are going to miss your court date, you must file a written request to the support magistrate, explaining why you cannot appear. You must call the courthouse to find out if your case has been rescheduled. If you miss a court date, a support magistrate can issue a **default judgment**. A default judgment is an order that is made when someone does not show up for court. In child support cases, the default judgment is an **order for child support** against the non-custodial parent. The order is based on the information the custodial parent gave to the court.

If you want to cancel the order, you must file a **motion to vacate a default judgment**. This is a written request asking the court to cancel the order. You must give the court a good reason for not showing up. If you are going to miss your court date, you must file a written request to the support magistrate, explaining why you cannot appear.

What if I am not the father?

If you were married to the mother when the child was born, the law assumes that you are the father. If you were married to the mother and believe that you are NOT the father, tell the support magistrate right away. This is called **contesting paternity**. The court must determine paternity (find out who is the father) before it can order child support. To determine paternity, the court may order a DNA test. If the test shows you are the father, the court will issue an **Order of Filiation** (fil-ee-AY-shun). This is a legal document from the court saying who the father of a child is.

Will the court give me a lawyer in a paternity case?

If someone brings a paternity case against you, and you cannot afford a lawyer, you can ask the support magistrate to appoint (give you) a lawyer for free. You can also hire your own lawyer. If you start a paternity case, the court may not give you a lawyer, even if you cannot afford one.

What if I do not agree with the support order?

You have the right to tell the court that you do not agree with the order. This is called an **objection**. If you receive a copy of the order in court the day it was made, you have 30 days to file an objection in writing. However, if the order was mailed, you have 35 days (from the day it was mailed) to file an objection in writing. You can file the objection with the clerk of the Family Court where the decision was made. A judge will decide the case. You may not have to come back to court for another hearing.

However you must continue to pay the child support until the court changes the order. The decision will be mailed to you. For more information, see the LIFT guide "How to File an Objection or Rebuttal to a Child Support Order."

How do I make support payments?

You can pay the custodial parent directly or through the **Support Collection Unit (SCU)** at the address below. If the custodial parent receives public assistance, SCU will automatically collect the support. There is no fee for SCU services, and they will keep track of all payments.

Please remember: Always write the case number on your payment to SCU to make sure you get credit for the payment. Do not use cash – especially if you make payments directly to the other parent!

What if SCU makes a mistake?

In New York City, go to the SCU office located at 151 West Broadway, 4th floor, in Manhattan and ask to speak with a customer service representative.

For other county SCU information, or to ask questions by phone, you can also call the statewide Office of Child Support Enforcement at (888) 208-4485.

How long is a support order in effect?

Once child support has been ordered, it stays in effect until someone asks the court to change it, or your children turn 21 years old, or your children are **emancipated**. Children are emancipated if they are living separately from the custodial parent and supporting themselves, married, or in the military. If you pay through SCU, they automatically reconsider the case every three years. When they evaluate the case, SCU may add a cost-of-living (COLA) increase. SCU can do this without going back to court. If they do this, they will send you a letter.

What happens if I do not pay?

Once there is a court order to pay child support, you must pay. If you do not pay, you will have arrears. Arrears WILL NOT go away, even after your child turns 21. Declaring bankruptcy will NOT get rid of arrears either.

SCU has different ways to get the money from you.

- SCU can have your employer take the child support directly from your paycheck. (By law, your employer must do this. But your employer cannot fire you because of it.) This is called **garnishing your wages**.
- SCU can take your state or federal tax refund before you get it. SCU can also take money directly from your bank account.
- If you owe more than a few months of support, SCU can suspend your driver's license or professional licenses until you have paid the arrears.
- If you owe large amounts of money, and SCU or the custodial parent asks the court to find that you are **willfully violating the support order**, you could be put in jail for up to six months. Willfully violating means not following the order means not following the order on purpose.

What can I do if I lose my job or cannot pay?



If you lose your job or cannot pay for another reason – such as your income was lowered or you are going to prison – the court will NOT automatically change the amount of child support you are supposed to pay. If you cannot pay, immediately go to the Family Court where the order was made and file a **petition for downward modification**. This is a written request asking the court to lower the amount of child support you pay. To get the court to lower the amount, you must prove that a substantial change of circumstances has happened since the support magistrate made the final order.

- A substantial change of circumstance can be that you are incarcerated as long as the incarceration is not because of not paying child support or a crime against the custodial parent or child.
- You can also ask for a modification if 3 years have passed since the last order was made.
- Also, if either you or the custodial parent's income changed (either up or down) by 15% or more since the last order was made, you may request a modification.

When you go to court, you must bring proof that your income changed. You should ask the court to reduce your support going back to the date when you filed the petition. However, until the court makes a different order, you must continue to pay the original amount.

The court may look at what you made before and decide that you could make more than you do now. If this happens, the court might not change the order.

If my child is on public assistance and I pay support, who gets the money?

If the custodial parent receives public assistance, SCU will automatically collect the support for DSS. If you do not owe arrears, \$100 of your monthly payment will go directly to the custodial parent. If you owe arrears, support will go toward the arrears first. SCU will still collect support payments from you even if you give money directly to the custodial parent. DSS may also reduce the child's welfare budget to recover this "extra" money received by the family.

Can I take my child off public assistance?

Only the custodial parent who started the public assistance case can take a child off of public assistance. The non-custodial parent cannot close the public assistance case.

Why would a custodial parent take a child off of public assistance?

If your income is high enough, your child may receive more money by getting support from you instead of from public assistance. For example, if you are the father of all the children in the home of the mother, and she can show that you will support them, taking them off public assistance should not be a problem. If the mother has children by other fathers on her public assistance budget, taking your children off is more difficult. The state wants all children in a household to have the same income, so the mother might not be able to take only your children off of public assistance.

What if I already support my child?

Be sure to keep receipts for all support payments so you can show that you have paid them. Paying bills or buying gifts does not replace paying child support. You must make regular payments. You must also pay for any arrears that have added up.

What if there is no child support case, but I want to support my children?

Non-custodial parents cannot start child support cases. If you want to support your children, but do not know where they are, you can put the money in a separate bank account until you are able to find them.

If I have been paying support, can I also get visitation?

Not necessarily. Child support and visitation are not connected. If you have not been able to see your children, you must file a **petition for visitation** with the court. Whether or not you are seeing your children, you are still responsible for paying child support. For more information on getting visitation with your children, see the LIFT guide "Custody and Visitation."

Where can I go for help?

If SCU is working on your case in New York City, go to 151 West Broadway, 4th floor in Manhattan and ask to speak to a customer service representative. For other county SCU information, or to ask questions by phone, you can also call the statewide Office of Child Support Enforcement at (888) 208-4485.

This document should not take the place of a consultation with a lawyer. LIFT encourages all individuals involved with the Criminal and Family Court systems to consult with a lawyer.

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