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SECURE LIVE CHAT

**WillowCenterNY.org**

**24/7 SUPPORT**

# Order of Protection Guide

## **Monroe County Family Court**

Monroe County Hall of Justice, Room 358 (Third Floor)  
99 Exchange Boulevard (near Court Street)  
Rochester NY, 14614  
Monday - Friday, 8:30 a.m. - 5:00 p.m.

## **Willow Court Advocacy Program**

Secure Family Court Waiting Area at  
The Monroe County Hall of Justice on Third Floor  
(585)565-8484

## **The Legal Aid Society of Rochester (LASROC)**

Free, comprehensive legal representation from compassionate attorneys available to income-qualified survivors in Monroe and surrounding counties.

For law matters including Orders of Protection, custody and visitation, divorce, child and spousal support, name change, paternity, immigration and housing.

The Monroe County Hall of Justice on Third Floor  
(585)232-4090 | [lasroc.org](http://lasroc.org)

EN ESPAÑOL



## Willow support at Family Court

Regardless of the outcome of this process, whether or not an order is served, or if a petitioner changes their mind, Willow can continue to support by providing:

- Court Advocacy
- Counseling
- 24/7 Hotline Crisis Support (call/text)
- Safety Planning
- Referrals & Resources
- Emergency Shelter

## Processes separate from Family Court but can be used at the same time:

- Custody Court
- Divorce Court
- Child Support
- Criminal Court

See back of guide (page 8) for more information.

## File the petition.

### Offense criteria

Harassment, assault, sexual abuse, reckless endangerment, strangulation, stalking, disorderly conduct, and/or criminal mischief.

### Relationship criteria

Current/former spouse or intimate partner, parent of your child or person related by marriage or blood.

### Stay Away/Restraining Order is granted.

#### Possible Court Decision 1: Stay Away

*(If parties do not live together.)*

Parties must stay away and have no direct or third-party contact.

#### Possible Court Decision 2: Vacate & Stay Away

*(If parties live together.)*

In addition to staying away and having no contact, the respondent must vacate the residence.

OR

### Refrain from Offensive Conduct Order is granted.

Parties may have contact, reside in same location and so forth, but respondent must refrain from committing any family or criminal offenses such as harassment, stalking, assault, etc.

OR

### No order is granted.

If another/new incident occurs, the petitioner may come back to court and petition again.

### Order is served.

The petitioner makes arrangements to have the order served *(instructions on page 4)*. The order is temporarily in place until its expiration date.

OR

### Order is *not* served.

Server could not hand respondent service packet. The petitioner should still return to court for the return date.

The petitioner may choose not to have the order served and/or changes their mind about service.

If another/new incident occurs, the petitioner may come back to court and petition again.

## Return date to court.

**(The petitioner should return to court whether or not an Order is served.)**

### Order is settled.

Parties agree to the terms in the order and it is made permanent for up to two years.

A petitioner may change their mind and ask the court to withdraw an order after it has been settled. A form can be obtained and left at the court. A judge will review the form and make a decision.

Paperwork and decision will be mailed to the petitioner and respondent.

OR

### Order is contested.

The respondent does not agree to the entire order or terms of the order.

#### Trial to follow.

Further court dates are scheduled.

OR

### Order is dismissed.

The temporary order is no longer valid and restrictions are no longer in place.

## If someone does not return or show up to court...

### Petitioner does not show:

The court may continue with the process or may dismiss the order.

### Respondent does not show:

If the order was served, the court will continue with the process without the respondent present or may choose to reschedule.

The petitioner will receive a paper packet they will take home with them.

The petitioner needs to make arrangements to have the order served.

### OPTION 1

#### Service by Law Enforcement\*

- The petitioner must be in contact with the law enforcement jurisdiction **in which the respondent resides**.
- The petitioner must make arrangements with law enforcement to get them the service packet.
- Law enforcement will attempt to serve the order **up to three times**.
- Law enforcement may return the packet to the petitioner in between attempts.
- Law enforcement will **notify the petitioner** of a successful service.
- Law enforcement will return the packet back to the petitioner if three service attempts fail.
- Petitioners may check the status of a served order by visiting: [www.sheriff-assist.org](http://www.sheriff-assist.org)

*\*This is the option the court system will default to using. It is typically the safest option.*

### OPTION 2

#### Service by Third-Party Affidavit (friend or family)

- Anyone **18 or older** may serve an order on behalf of a petitioner.
- Service must be completed at least 24 hours before a scheduled court appearance.
- The server must have the **Third-Party Affidavit Form**. They can get it from the court or from Willow.
- The third-party server needs to physically hand the service packet to the respondent. The server does **not** need to say anything to them (e.g. "You have been served.")
- The respondent does **not** need to keep the packet. They can drop it, throw it away, etc. Once the packet is handed over, it's considered served.
- The third-party server then needs to sign the deliver form confirm service **in front of a notary**. If not signed in front of a notary, service is not valid.
- Once signed, the form must be brought back to the clerk's office at the courthouse.

### OPTION 3

#### Service by Process Server

- A process server is a professional that the petitioner hires to serve the order on their behalf.
- Process servers are sometimes like private investigators.
- Cost for this service is **paid independently by the petitioner**.
- Fees are often based on how much work the process server needs to do to find and serve someone.
- A process server will use the **Third-Party Affidavit Form** to serve the respondent.
- The process for this service is the same as service by the Third-Party Affidavit (*see OPTION 2 process to the left*).

### OPTION 4

#### Do Not Service

- The petitioner chooses not to have the order served and/or changes their mind about service.
- If another/new incident occurs, the petitioner can come back to court and petition again following the process on the previous page of this brochure.

**Order is served.**

The order is temporarily in place until its expiration date.

OR

**Order is *not* served.**

The server was unable to physically hand the service packet to the respondent.

The petitioner should still return to court for the return date.

**Return date to court (whether or not an Order is served).**

Whether a temporary or permanent Refrain From Offensive Conduct Order or a Stay Away/Restraining Order is violated...

### The first step is always to CALL 911.

Then an arrest is made and criminal charges are filed.

OR

No arrest is made and no criminal charges are filed.

A petitioner may choose to file their own family offense in Family Court regardless of arrest/charges status and regardless of whether or not a criminal order of protection is in place.

If a petitioner has an order through Family Court, it is recommended they *continue to petition/file violations and/or new offenses* through Family Court regardless of any Criminal Court status.

If a petitioner does *not* do this, no new orders will be created and no existing order will be changed or updated.

It is strongly recommended to consult with legal counsel to determine the best options for individual situations.

Petitioners *may* have active orders of protection in both Criminal and Family Court at the same time.

### The violated order was a temporary order.

If the order was a Stay Away/Restraining Order, the petitioner does not need to stay at court, they may leave.

OR

If order was a Refrain from Offensive Conduct Order, the petitioner will remain at court to see a judge.

Order remains as a Refrain from Offensive Conduct Order.

OR

Order is upgraded by judge to a full Stay Away/Restraining Order.

Whether a Refrain From Offensive Conduct Order or Stay Away/Restraining Order, the incident will be process by the court and added to the current case.

The court will mail the service packet to the petitioner. The petitioner will need to have the order served (see page 4).

### Return date to court (whether or not an Order is served).

### The violated order was a permanent order.

The new incident will re-open the case.

The petitioner will need to arrange for the new order to be served (see page 4).

### Return date to court (whether or not an Order is served)

A judge may extend the length of the original order and/or modify the conditions of the original order.

OR

The original order may remain in place as it is with no changes.



## Willow Support at Family Court

Regardless of the outcome of this process, whether or not an order is served, or if a petitioner changes their mind, Willow can provide:

- Court Advocacy
- Counseling
- 24/7 Hotline Crisis Support (text/call)
- Safety Planning
- Referrals & Resources
- Emergency Shelter

Highly trained professionals and volunteer advocates explain the process, discuss expectations and accompany survivors in court to petition for an Order of Protection. Willow Center also collaborates with the Legal Aid Society of Rochester, who provide free legal services to those who qualify.

## Tips When Coming to Court

- Come early if you can. Probation opens at 8:30am, court opens at 9:00am and the process is first come, first served.
- Childcare with qualified providers is free and available on the third floor.
- If you can, bring a support person, friend or family member to support you through the process.
- If you come by yourself, remember you are never alone. Willow Advocates are here to support you in a separate, safe and private area on the third floor.
- Court is closed from 12:30pm-1:30pm. Willow Advocates are on lunch from 1-2pm

## What to Expect at Family Court

The process of requesting a Family Court Order of Protection can often take a few hours, so it is recommended that petitioners arrive at either 8:30am or 1:30pm. The petitioner does not need an appointment to file for an Order of Protection, but they will be asked for photo ID.

In addition to filing for a Family Court Order of Protection, a survivor has the right to contact the police in order to report the crime, pursue criminal charges or request a criminal Order of Protection.

## Criminal Court Process

**The Criminal Court process is separate from the Family Court process.**

- A petitioner who is connected in the criminal process may choose to petition for an Order of Protection in the Family Court process at the same time.
- If granted, a petitioner may have active Orders of Protection in both Criminal and Family Court at the same time in regards to the same person(s) and/or situation(s).

**A Criminal Court judge may issue an Order of Protection on behalf of an individual in the criminal process.**

- The judge will determine the criteria and restrictions in this order of protection without input from the individual.
- The individual may or may not be notified that there is an Order of Protection in place.
- To determine whether or not a criminal order of protection is in place, individuals may contact (585)371-3416.

**For assistance, status information and support regarding Criminal Orders of Protection, individuals may contact the District Attorney Victim's Assistance at (585)753-4573.**