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Chief of Police

**ALBANY, NEW YORK**  
**POLICE DEPARTMENT**  
165 HENRY JOHNSON BOULEVARD  
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1789

**ORDERS OF PROTECTION**  
**GENERAL ORDER NO: 3.8.15**

<b>Issue Date:</b> July 24, 2019	<b>Effective Date:</b> March 1998
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<b>Distribution:</b> All Personnel	<b>Page:</b> 1 of 9
<b>Issuing Authority:</b> Chief Eric Hawkins	

**PURPOSE:** The purpose of this policy is to provide a procedural basis for serving, recording, and enforcing orders of protection.

**POLICY:** It is the policy of the Albany Police Department that the reception, service, and recording of all orders of protection, through this jurisdiction, shall be executed, enforced, and maintained in a professional and expeditious manner.

**DEFINITIONS:** **Petitioner** – A petitioner means a person who presents a formal, written application to a court requesting action on a matter. A petitioner is also sometimes referred to as the protected party.

**Respondent** – A respondent means a person who is required to answer a petition for a court order, or writ, requiring the respondent to; take some action, halt an activity, or obey a court’s direction. A respondent is also sometimes referred to as the alleged offender.

**Ex-Parte** – Ex-parte means a decision that is decided by a judge without requiring all involved parties to be present.

**Order of Protection** – An order of protection means a civil or criminal order that provides protections to a person from another person. A civil order of protection provides protections to a person from another person that they are married to, separated from, divorced from, have a child in common with, are/were in an intimate/dating relationship with (including same sex and teen couples) or are related to by blood or marriage. A criminal order of protection provides protections to a person from another person that results in arrest, the defendant who may be known or unknown to the victim, but no specific relationship is required.

**I. ISSUING COURTS**

- A.** A local criminal court, family court, county court, or Supreme Court may issue orders of protection and temporary order of protections. Each order of protection can only be modified or terminated by that same court or a court of competent jurisdiction. Although the penalties for violating these orders are similar, differences exist in the circumstances

under which each of these orders may be obtained, and the manner in which they should be enforced. Personnel should be guided by the following distinctions when advising the public as to which forum may be of assistance in granting orders of protection, and shall be considered valid under the following conditions:

**1. Criminal Court and County Court:**

- a. Local criminal courts and county courts may issue temporary orders of protection that provide protection for victims of family offenses or other crimes when a criminal action is pending. Therefore, a local criminal court or county court cannot issue a protective order unless an accusatory instrument has already been filed.
- b. Local criminal courts also have the authority to issue a family court order of protection when family court is not in session.

**2. Supreme Court:**

- a. Supreme courts may issue an order of protection or a temporary order of protection in connection with an action for divorce, separation, or annulment.

**3. Family Court:**

- a. Family court may, unlike the supreme court, county court, or local criminal court, issue an order of protection without any other action being brought, when the parties relationship falls into one of the following categories:
  - i. Current or former spouse;
  - ii. Child in common;
  - iii. Related by blood or marriage;
  - iv. Same sex relationships; or
  - v. Parties have, or had, an "intimate relationship".
- b. A relationship may be considered intimate based on factors such as; how often the parties see each other; or how long they have known each other. An intimate relationship does not have to be a relationship that is of a sexual nature only. After a petition is filed with the court, the court will determine if the relationship qualifies as an "intimate relationship".

**4. Foreign Order of Protection:**

- a. Any foreign order of protection, defined as a court order that is issued by a court other than a court located within New York State, including:
  - i. Any state, county, or local court of other states;
  - ii. Any Indian tribal court located within the United States;
  - iii. Any court within the District of Columbia; and
  - iv. Any court of a commonwealth, territory, or possession or the United States (American Samoa, Guam, Northern Marian Islands, Puerto Rico, and the U.S. Virgin Islands).

## II. GUIDELINES FOR SERVING ORDERS OF PROTECTION

A. On occasion, Family Court and Supreme Court will issue ex-parte orders of protection. The issuing court then calls upon this department to serve these orders of protection, and in some cases the petitioner is directed to the local police department for service. When such instances occur the following procedures must be followed:

1. Desk personnel must take a copy of the order of protection and complete the following two (2) forms.

a. Certificate of Service Form:

- i. The Certificate of Service Form is the form that is attached to the order of protection by the issuing court and lists the name and address of the person whom the order of protection shall be served upon.
- ii. The officer making the service shall fill out the following sections:

- a) Incident number;
- b) Date the service was executed/attempted;
- c) Time the service was executed/attempted;
- d) Name of individual served;
- e) Sworn declaration;
- f) Type of service made;
- g) Physical descriptors pertaining to the respondent listed, whom the legal process was served;
- h) Location of service; and
- i) The serving officer's name and signature.

iii. The completed form, shall then be faxed to the issuing court, and sent via intradepartmental mail to the Children and Family Services Unit (CFSU) so that it can be filed with a copy of the order.

b. Albany Police Department Service Log Sheet:

- i. The Albany Police Department Order of Protection Service Log Sheet, APD Form # [REDACTED] shown on page 8 of this order, is a newly instituted form that will now be utilized by all personnel of this department.
- ii. The officer making the attempted service or executing service of the order of protection shall be responsible for recording the following:
  - a) Date and time service was executed/attempted;
  - b) Name of the officer executing/attempting service;
  - c) Name of person on whom the order of protection was served upon (respondent);
  - d) Method of service/reason for non-service; and
  - e) Address of service/attempt.

iii. It will be the responsibility of desk personnel to track and attach the

Service Log Sheet to all orders of protection submitted for service.

- a) Desk personnel will also be responsible for the collection of all Order of Protection Service Log Sheets at the end of each shift, and turning said log sheets over to the shift supervisor for dissemination on the next shift.
- iv. When personnel of the Albany Police Department are asked to serve an order of protection, at least two (2) attempts shall be made on the day requested by the petitioner. The following is an example of such:
    - a) An order of protection comes in at the end of "B" shift, one attempt shall be made during "B" shift, and one attempt shall be made on "C" shift.
  - v. If these two (2) attempts of service are unsuccessful, a third follow-up attempt shall be made the following day on "B" shift.
  - vi. If after three (3) total attempts are made, and the order of protection still has not been served, the order of protection shall be sent back to the issuing court, addressed to the issuing judge. This should be completed before the next court date that is listed on the order of protection. The unexecuted orders of protection may be mailed or delivered in person by the Central Booking supervisor or his/her designee.
  - vii. The original Albany Police Department Service Log Sheet, APD Form # [REDACTED], shall be filed at the respective patrol station.
    - b) A copy of the log sheet shall accompany the returned order of protection to the issuing court; and
    - c) An additional copy of the log sheet shall be forwarded to CFSU with the copy of the order of protection.
    - 1) Patrol sergeants are responsible for ensuring that all attempts are made in a timely manner and that all paperwork is completed.
  - viii. Desk personnel will be responsible for maintaining an Order of Protection Log Book, and recording the following information on the Patrol Station Order of Protection Log Sheet, APD Form # [REDACTED] shown on page 9 of this order:
    - a) The date and time that the order of protection was delivered to the station;
    - b) The employee who received and attached the log sheet to the order;
    - c) The employee who was assigned to serve the order;
    - d) The next employee who was assigned to serve the order, if applicable, and so on; and
    - e) The date and time that the order was served, or the date and time that the order was returned to the issuing court and by

whom.

- B. In some cases, the order of protection may have been given to the complainant to present to the police at a time when the defendant is present. When such service occurs, and a domestic incident is taking place, a Domestic Incident Report shall be completed in the usual manner, in addition to, the Certificate of Service Form.
- C. After serving an order of protection personnel should follow the guidelines set forth in TB 17-05 E-Justice Entry and Notifications, in order to notify persons named in the order of protection of its service.

### III. GUIDELINES FOR ENFORCEMENT OF ORDERS OF PROTECTION

- A. Orders of protection and temporary orders of protection are enforceable throughout the United States and its territories. Personnel shall enforce all valid orders of protection granted by a court of any jurisdiction, and enforce them as if they were issued by a local court. The following procedures shall be followed in the investigation and enforcement of orders of protection:
  - 1. It is policy of the Albany Police Department to enforce all orders of protection, duly issued and properly served upon respondents. The police department shall maintain files for all orders of protection, when either the petitioner or respondent lives, works, or has other cause to be in the City.
    - a. Upon receipt of an order of protection, it shall be forwarded to CFSU and maintained alphabetically by the respondent's last name, and shall contain only those orders of protection wherein the respondent has been served.
    - b. Whenever there are additional documents included with an order of protection (e.g., order to show cause, custody order, visitation order, petition summons) the additional documents should be attached with the order of protection and served to the respondent.
  - 2. When an officer has reasonable cause to believe that the respondent has violated a valid and duly served order of protection (the respondent has actual knowledge due to being present in court when such order was issued), officers shall arrest the respondent, and shall not attempt to reconcile or mediate the parties.
  - 3. Even if the victim is unable to produce a copy of the order, a lawful arrest shall be made, as long as the officer is able to verify the existence and terms of such order.
    - a. Verification is required only if the complainant is unable to produce a copy of the order, or if the complainant's copy appears to be altered or unreadable.
  - 4. Whenever an arrest is made for violating an order of protection, a supporting deposition shall be taken from the victim.
    - a. This deposition shall include a statement that the terms of the order were violated, and a description of the offender's behavior.
    - b. If a statement cannot be obtained, officers are to articulate their probable

cause for arrest on an Investigation Report.

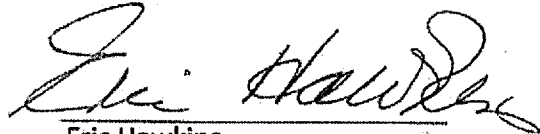
5. All violations of court orders shall be charged under New York State Penal Law Criminal Contempt Sections and returnable to Albany City Court.
  6. If an arrest is made for violating an order of protection issued by family court, the arresting officer shall advise the victim that they may also file a petition through family court that can run concurrently with the criminal court proceeding.
  7. If the victim has an extra copy of the order available and is willing to give the extra copy to the officer, one copy should be taken. If an extra copy is not available, officers should make a copy and return the original to the complainant. At no time, shall an officer take a complainant's sole copy without returning it.
  8. In many instances, the conduct prohibited by the order of protection will be conduct that is independently unlawful. The suspect shall be charged with the violation of the order of protection, as well as the unlawful conduct. The following is an example:
    - a. A person who assaults another in violation of an order of protection in which the order prohibits assault. The person has committed two (2) offenses, and shall be charged with both the violation of the order of protection and the underlying assault.
  9. Appearance tickets shall not be issued when a defendant is charged with violating an order of protection.
- B. When officers are called to the scene of an incident, by a petitioner, asking personnel of this department to enforce an order of protection, which has *NOT* yet been served on the respondent, the following options are available to the responding officer:
1. Enforce the order of protection if the officer has reasonable cause to believe the respondent is aware of its provisions. In this instance, the petitioner shall be required to give a written statement that they have personal knowledge that the respondent was served with the order.
  2. Enforce the Penal Law in order to safeguard the rights of all parties.
- C. Out of State Orders of Protection:
1. Orders of protection issued in another state shall be given full-faith and credit in New York State.
  2. When an officer is presented with an order of protection issued in a state other than New York State or by a Tribal Court, the officer shall determine its validity, similar to assessment of a New York State Order.
  3. Unless clearly invalid, an out-of-state order will be presumed to be valid, and shall be enforced according to the conditions set forth in that order, by the criminal court with jurisdiction over the acts constituting the immediate offense.

#### **IV. ORDER OF PROTECTION MAINTENANCE SYSTEM**

- A. CFSU will be responsible for all orders of protection and temporary orders of protection in RMS. This will include the filing of all hard copies.
- B. If an officer needs to verify a hard copy of an order of protection, officers shall contact

CFSU.

1. During off hours, or if there is no one available at CFSU, the officer shall contact the Criminal Investigations Unit (CIU) desk personnel. CIU personnel will then be responsible for physically checking the files in CFSU.
2. In the absence of desk personnel in CIU, personnel from South Station shall be responsible for checking the files in CFSU.
3. If a physical copy of an order of protection is needed, the officer shall make a photocopy of the order and re-file the original copy.



Eric Hawkins

Chief of Police

# Albany Police Department



## Order of Protection Service Log Sheet

Petitioner:				
Respondent:				
File Number:				
Docket Number:				
Service Address:				
Officer Attempting Service:	Date:	Time:	Incident Number:	Service Made (Y/N) If no, why not?

- 1 A summons, petition, and temporary order of protection may be served by a police officer on ANY day of the week and ANY hour of the day or night.
  
- 2 Upon receiving the order of protection, at least two (2) attempts will be made on the day requested by the Petitioner. If unable to serve on the day of receipt, a follow up attempt will be made on the subsequent day.
  
- 3 If after three (3) total attempts are made and the order of protection still has not been served, the order of protection will be sent back to the issuing court, with a reason why it was not served. A copy of this Log Sheet shall also be included.
  
- 4 The original Order of Protection Log Sheet will be filed at the respective Patrol Station.
  
- 5 An additional copy of the Order of Protection Log Sheet shall be forwarded to CFSU, along with a copy of the order of protection.

**UPON SUCCESSFUL SERVICE, FAX THE ORIGINAL COVER SHEET TO ALBANY COUNTY FAMILY COURT AT:  
518-462-4248**

APD Form # 347 (7/15)



**Albany Police Department  
Order of Protection  
Patrol Station Log Sheet**



Petitioner:

Respondent:

File Number:

Docket Number:

From:

To:

Date:

Time:

PETITIONER