



<b>ORDERS OF PROTECTION</b>		
✓ <b>new:</b> <b>rescinds:</b> <b>amends: All previous</b>	<b>cross-reference:</b>  <b>accreditation standards:</b> NYSLEAP Standard(s): 44.1	
<b>effective date:</b> February 2024	<b>amend date:</b>	

**I. PURPOSE**

The purpose of this General Order is to establish and describe the policies and procedures for office personnel responsible for the management and enforcement of Orders of Protections.

The Tompkins County Sheriff's Office plays a key role in providing for the safety of a victim through the timely service of Orders of Protection. Service of all valid orders must be properly documented to allow for the applicable enforcement of violations and notification to victims.

**II. POLICY**

It is the policy of the Tompkins County Sheriff's Office to thoroughly investigate incidents involving an alleged violation of an Order of Protection and to affect an arrest whenever there is reasonable cause to believe that a crime has been committed and that an Order of Protection has been violated.

Appearance tickets will not be issued, nor will pre-arraignment bail be set in any case involving a violation of an Order of Protection. In such cases the defendant will be held in custody pending arraignment.

**III. DEFINITIONS**

*Order of Protection:* A written order issued by a court for the purpose of preventing violence or threatening acts or harassment against, contact or communication with, or physical proximity to, another person. This includes both temporary and final orders. The order may be issued by civil or criminal courts.

**IV. PROCEDURES**

A. Orders of Protection

1. Temporary and Permanent Orders of Protection may be issued by a local Criminal

Court, Supreme Court, or Family Court. The penalties for the violation of these Orders are similar, but differences exist in the way each may be obtained. Members should be guided by the following distinctions when advising the public as to which forum may properly be of assistance in granting an Order of Protection.

2. Criminal Court (CPL Section 530.12, 530.13)

Criminal Courts may issue a Temporary Order of Protection to the victims of family offenses and may also issue protective Orders to victims of other offenses, after the filing of an accusatory instrument. The duration of these Orders is determined by the Court. In addition, when Family Court is not in session, the Criminal Courts have the authority to issue a Temporary Family Court Order of Protection based upon affidavit.

3. Supreme Court (Domestic Relations Law Section 252)

Supreme Courts may issue an Order of Protection in connection with an action for divorce, separation, annulment if one of these actions is already before this court.

4. Family Court (Section 430, Article 8)

Family Courts may issue protective Orders to persons subject to the jurisdiction of the Family Court. An Order of Protection may be issued to prohibit conduct which may not be a violation of the law. There is no requirement that any Family Court action be started other than filing of a Family Court Petition. Orders may be issued to any party of a domestic dispute.

5. Out-of-State Courts (18 U.S.C. 2265)

Title 18, § 2265 of the United States Code requires that out-of-state protective Orders be accorded "full faith and credit" by the courts of another state.

B. Receiving and entering an Order of Protection

1. Office personnel will use the following procedures to ensure the prompt and efficient entry of an Order of Protection into our records management system (Spillman), and CivilServe (Civil management program that tracks service history and generates certificates of service) when necessary.
2. All Orders of Protection received during regular business hours will be turned over to the Civil Division for entry.
3. Upon receipt of an Order of Protection from a Court in our jurisdiction, staff in the Civil Division will time stamp the document and enter the order into the Spillman WANTS table. The following information should be included:
  - Date issued, date received, date expires
  - Docket number if one is listed on the order
  - Court number if one listed on the order

- Process type – PO for Protective Order
  - Disposition – ACN for Active not Served, or APO for Active Protective Order if the subject has already been served
  - Enter the persons name in the Wanted Person section.
  - Enter issuing court and Judge.
  - In remarks, state conditions of the order and whom is the protected party.
  - Scan a copy of the order into the file attachment
4. All Order of Protections that require service by this Office, Civil Division staff will create a case file in CivilServe. Upon entering the case, they will print a Report Card of Service and staple it on top of the Order of Protection to be served.
  5. Civil staff will then complete an Order of Protection Routing Form. This form will be attached to the Order of Protection file that will be maintained in the office.
  6. If the Order of Protection requires service, a copy of the order along with the report card of service will be forwarded for service. The original Order of Protection file will be maintained on top of the filing cabinet in the back of the Civil Office until it is served or until all avenues to locate the person have been exhausted.
  7. If an Order of Protection does not require service or if service was unable to be made, the Order of Protection file will be stored in the filing cabinet in the hallway between the Undersheriff's office and CID.
  8. If an Order of Protection is received outside of business hours and needs to be served, the on-duty Sergeant will be responsible to make sure the Order is entered into the Spillman WANTS tab and will attach a blank Report Card of Service to the Order. A copy of the Order will be forwarded to Civil so an entry into CivilServe can be made during regular business hours.

C. Service of Protective Order

1. Service of protective orders is a priority assignment and should be diligently attempted.
2. Orders of Protections and Temporary Orders of Protections may be served any day of the week and at any hour of the day or night (FCA § 153-b).
3. If an officer assigned to Civil is available to attempt service, the order will be assigned to that officer.
4. If a Civil Deputy is unavailable, and the Order of Protection is a new order, a modified order that went from a non-harassing to a stay away order, an order removing a person from a residence, or any firearms surrender will be given to the on-duty Road Patrol Sergeant who will assign an officer to attempt service.
5. The officer assigned will make every effort to serve the Order and document any attempts on the report card of service. If the officer is unable to serve the order of protection, he/she will return the order to the on-duty Sergeant. The on-duty

Sergeant will continue to assign an officer until the order is served or a Civil Deputy is available to attempt service.

6. When an Order of Protection includes an Order to surrender firearms, the firearms shall be taken into custody. All processing, security and storage shall be in accordance with *General Order 205 Property/Evidence Management*.
7. Once the Order of Protection has been served, the officer that served the order will complete the following:
  - a. Complete the report card of service and forward it to Civil who will prepare a Certificate of Service.
  - b. Enter the service into eJustice. The time period immediately following service is recognized as a particularly crucial time for a victim and the eJustice entry enables the Order of Protection Notification Program to make electronic victim notifications. See Entry of OOP's into eJustice guide sheet in attachments.
  - c. Update the Disposition in the Spillman WANTS Table to OOP (Order of Protection Served).
8. Upon receiving a completed Report Card of Service, Civil Division staff will generate the Certificate of Service and place it in the Officer's mailbox. In addition, they will update the Order of Protection Routing form and store it in the filing cabinet in the hallway.
9. When the serving officer receives the Certificate of Service, they will sign the certificate and forward it to the Civil Division.
10. Once the Civil Division receives the signed Certificate of Service from the serving Officer, they will attach a copy of it to the Order of Protection file and forward the original to the Court that issued the Order of Protection.

D. Investigating and Enforcing Violations of Orders of Protection

1. Officers receiving a report of an alleged violation of an Order of Protection shall conduct a thorough investigation of the facts and circumstances.
2. Officers shall arrest a person and shall not attempt to reconcile the parties or mediate, when the officer has reasonable cause to believe that the defendant/respondent has violated a valid and duly served Order of Protection.
3. The investigating officers should attempt to verify the Order of Protection through eJustice. If an Order of Protection is in eJustice, it should be confirmed directly with the agency of record. The Officer may use the 911 Center to assist in this process.

4. A lawful arrest may be made even if the victim is unable to present a copy of the order, if the officer is able to verify the existence and terms of such order.
5. Upon verification of the Order of Protection, and if a condition on the order has been violated, an arrest shall be made. There is no requirement that prohibited behavior occur in the officer's presence. An arrest may be based upon factors other than the officer's observations, provided that reasonable cause exists that the Order of Protection has been violated.
6. There is no requirement that the offender still be at the scene of the violation to make a valid arrest. If the offender has left the scene officers will take statements from the victim and any available witnesses. The statement should include a statement that the terms of the Order of Protection were violated and a description of the offender's behavior. Attempts will be made to locate the offender and make a lawful arrest. If the offender cannot be located, the assigned officer will complete and submit the necessary paperwork for an arrest warrant application.
7. If the victim cannot produce a copy of the Order of Protection and the Officer is unable to verify that an Order of Protection exists, and the conduct committed does not constitute an arrestable offense, the officer should consult the on-duty Sergeant.
8. If TCSO does not have a copy of the Order, and the victim has an extra copy, the officer may take that copy for their case file. If an extra copy is not available, the Officer should make a photocopy. Do not take a complainant's sole copy. A copy of the Order of Protection shall be attached to the accusatory instrument.
9. In many cases the offensive conduct prohibited by the Order of Protection will be conduct that is independently unlawful. In these cases, Officers will charge the Defendant with both the violation of the Order of Protection AND the underlying offense(s).
10. Appearance tickets shall not be issued, nor will pre-arraignment bail be set when a defendant is charged with violating an Order of Protection. *See GO 710 Appearance Tickets*

E. Arrest Processing on Orders of Protection

1. Process the arrest following standard arrest procedures and completing necessary arrest forms.
2. Officers will adhere to the current office arrest processing guidelines and the procedures set forth in our General Orders.

F. Emergency Temporary Family Court Order of Protection

1. A Temporary Family Court Order of Protection may be obtained from either the Family Court, or if not in session, then any local criminal court if the following are met:

- a. A legal arrest cannot be affected; AND
- b. The issuance of a Temporary Family Court Order of Protection may prevent the possible occurrence of domestic violence; AND
- c. The complainant requests the issuance of such an order.

G. Obtaining an Emergency Temporary Family Court Order of Protection

1. If the Family Court is in session, refer the complainant to Family Court. The Officer shall assist the complainant in this process by providing the court contact information, court location, and assistance for the complainant getting to the court if needed.
2. If the Family Court is not in session, the Officer will contact the local criminal court (FCA §154-d). The officer will advise the Judge of the situation and the request for a Temporary Family Court Order of Protection.
  - a. The Officer will, if needed, assist the complainant in responding to the local criminal court.
  - b. At court, the Petitioner will make the request to the local criminal court by sworn affidavit (“petition”) in accordance with CPL §100.30. The petition will allege the following:
    - Family Court is not in session;
    - A family offense has been committed;
    - A family offense petition has been or will be filed in Family Court on the next day the court is in session; AND
    - A showing of good cause for issuance of a Temporary Order of Protection;
    - The local criminal court, upon issuance of an order returnable to Family Court, shall immediately forward a copy of the order and sworn affidavit to Family Court;
    - Upon issuance of a temporary order by the local criminal court, the order will be served on the respondent in accordance with section IV. B of this General Order.

H. Out-of-State Order of Protection

1. Title 18, § 2265 of the United States Code requires that out-of-state Protective Orders be accorded “full faith and credit” by the courts of another state. For enforcement purposes, any protective order issued by the court of another state shall be enforced as if it were the order of a New York State Court.

2. Definitions

*Out-of-State (Foreign) Order of Protection:* Any Order of Protection issued by another State, Indian tribe, territory, or possession of the United States, Puerto Rico, or the District of Columbia, whether or not the order is similar

to Orders of Protection issued in New York State.

*Full Faith and Credit:* A provision of the 1994 Violence Against Women Act (VAWA) requiring that Foreign Orders of Protection be recognized and enforced as if they were Orders of a New York court.

3. When an out-of-state Order of Protection has been presented and it is currently being violated, the Officer shall attempt to verify if the order is valid.
4. In emergency situations, an out-of-state Order of Protection should be presumed valid when presented to the officer, accompanied by a statement (written or verbal) by the protected party regarding the nature of the violation and the validity of the Order of Protection.

I. Maintenance of Orders of Protection on file with this office

1. Order of Protection files will be maintained in the filing cabinet that is in the closet in the hallway between CID and the Undersheriff's Office.
2. Staff in the Civil/Records Division are responsible for the maintenance and upkeep of this cabinet.
3. Civil Division staff is responsible for running reports on a regular basis showing what orders have expired. When an expired order is located, staff will update Spillman and CivilServe as necessary. The routing form will be updated and the order will be removed from the filing cabinet in the hallway. The expired order will be placed in a drawer in the back of the Civil Office until the retention period is up.
4. When an Order of Protection is being vacated, modified, or amended, the issuing court must provide notice to this office. Such notice must be in writing. This notice may be delivered by fax, email, or in the mail. Civil/Records Division staff will be responsible for processing these requests to include updating Spillman and CivilServe as needed.

Attachments:

- A. *Report Card of Service*
- B. *Certificate of Service*
- C. *Order of Protection Routing Form*
- D. *Entry of OOP's into eJustice Guide Sheet*

By Order Of



Derek Osborne  
Sheriff