

FREQUENTLY ASKED QUESTIONS

PROMOTING PRE-TRIAL (PROMPT) STABILITY ACT

S.3066 (RAMOS)/A.3750 (SEPTIMO)

Everyday, New Yorkers are kicked out of their homes and rendered homeless without advanced notice and minimal process as a result of temporary orders of protection (“TOPs”) issued by criminal court judges. These orders, issued as a matter of course in virtually every case involving a witness, require the person charged to stay away from the home and place of business of that witness. Thus, those subjected to a TOP are often left on the street, confronting homelessness and at a heightened risk for re-arrest. The PromPT Stability Act seeks to address the problematic one-size-fits-all nature of these orders, in recognition of the diversity of needs and circumstances for people and families impacted by TOPs.

OVERVIEW

Q: WHAT IS A CRIMINAL COURT TEMPORARY ORDER OF PROTECTION?

A temporary order of protection (“TOP”), also known as a “stay-away order,” is a condition of release, imposed on a person charged with, but not convicted of, a crime. It requires a defendant to stay away from the person named in the order while the case is pending, or face criminal contempt charges. These are **not the same** as civil orders of protection, which can be obtained by petitioning a family court. As the New York Times has explained, a criminal TOP “is a well-intentioned pretrial precaution,” however “it has been issued with such abandon in city courts that it has become a sentence unto itself. . . . Prosecutors in domestic violence cases almost always request the orders, and judges grant them almost reflexively.” These orders are imposed just after arrest, and frequently render defendants homeless, and separate them from their family. This occurs even where the protected party does not want the TOP in place.

Q. WHAT IS THE DIFFERENCE BETWEEN A LIMITED TOP AND A FULL TOP?

A full TOP means that the defendant must stay away from the home, school, and place of business of the protected party, and have no contact with that person whatsoever. No matter what the circumstances, contact initiated (or reciprocated) by the defendant could lead to further criminal charges. A judge can also order a limited TOP which allows a defendant to have contact with the protected party, but orders them to refrain from harassing, intimidating, or threatening that person.

Q. HOW ARE TOPS ISSUED IN OTHER JURISDICTIONS?

In most other jurisdictions, limited TOPs are issued unless there is a specific, articulable need for a full TOP. In addition, many states including Connecticut, California, and Ohio, require an evidentiary hearing shortly after arraignments to assess the necessity of a full TOP. This evidentiary hearing addresses the due process rights of both the accused and the protected party, providing each an opportunity to be heard, and providing a meaningful opportunity for the Court to decide what sort of protection is necessary and appropriate given the allegations at hand and other case specific circumstances.

THE CRAWFORD HEARING

Q. WHAT IS CRAWFORD V. ALLY? HOW HAS IT CHANGED THE WAY TOPS ARE HANDLED IN CRIMINAL COURT?

On June 24th, 2021 the First Department handed down a decision in the matter of *Crawford v. Ally*, ruling that if a TOP interferes with a defendant's personal or property interest (e.g., renders them homeless, or separates them from their children), the Criminal Court must conduct a "prompt evidentiary hearing . . . in a manner that enables the judge to ascertain the facts necessary to decide whether or not the TOP should be issued." These hearings offer the judge an opportunity to examine the facts more closely than they could at arraignment, and decide if the order should remain in place, be limited, or removed.

The case was brought by Bronx resident Shamika Crawford, who was removed from her own NYCHA apartment, rendered homeless, and separated from her two young children for three months as a result of a full TOP. Her case was subsequently dismissed for lack of evidence against her. Her plight was documented by the New York Times.

Q. HOW DOES THE CRAWFORD DECISION CHANGE THE TIMELINE OF HOW AND WHEN ORDERS OF PROTECTION ARE ISSUED?

TOPs are still issued at the criminal court arraignment. When a Crawford hearing is requested and granted by a judge, the hearing happens "promptly" thereafter. In practice this has meant within a week of arraignment. At that hearing, the judge determines whether the TOP will be modified, and the criminal case moves forward as it otherwise would have regardless of the outcome of the hearing.

Q. WHY IS THE PROMPT STABILITY ACT STILL NECESSARY AFTER THE CRAWFORD DECISION?

While the *Crawford* ruling creates the right to a "prompt evidentiary hearing," it leaves open some questions regarding the precise contours of that hearing. This has led to an inconsistent application of the decision across the State. The PromPT Stability Act solves this problem by defining exactly what this hearing entails. The legislation is critical to ensuring that accused parties receive the due process they are entitled to based on *Crawford*, and that protected parties are given an opportunity to participate in the process if they so choose.

Q. WOULD A SURVIVOR BE REQUIRED TO TESTIFY AT THE HEARING TO SECURE A TOP?

No. The PromPT Stability Act explicitly states that while "the prosecution must present witness testimony" at the hearing, "the witness *need not be* the party protected by the order." Moreover, the participation of the survivor does not determine the outcome of the hearing. Holding such a hearing does, however, provide a concrete avenue for survivors to make their wishes heard regarding the TOP should they choose to do so, an option which currently does not exist. Many survivors do not want a full TOP—if, for example, the issuance of one would exclude the accused from their home and children, or negatively affect their process for obtaining citizenship. However, without a legal mechanism for survivors to be heard, that order may be issued against their wishes.

EFFECTS ON FAMILY & HOUSING COURT

Q. DOES THE CRAWFORD DECISION OR PROMPT STABILITY ACT ALTER HOW ORDERS OF PROTECTION ARE ISSUED IN FAMILY COURT?

No. The decision and the PromPT Stability Act pertain only to TOPs issued in Criminal Court as a condition of release. These are not the same as civil orders of protection that are obtained by petitioning the family court, where there is a standard process that must be followed.

Q. CAN A FAMILY COURT JUDGE MODIFY A CRIMINAL COURT TEMPORARY ORDERS OF PROTECTION (TOPS)?

If a Criminal Court judge indicates that the TOP can be modified by Family Court, technically the Family Court judge has jurisdiction. However, this is only applicable if the parties involved have children in common. If they do not, the Family Court has no jurisdiction. Moreover, the Family Court judge's role is limited to determining what contact is appropriate for the care of the children in common. Family Court has been closed to these applications throughout the pandemic, and there is a huge backup of cases needing TOPs modified (even before the pandemic, it could take weeks to get a court date in Family Court).

Additionally, going to Family Court can trigger involvement with the Administration for Children's Services ("ACS"), as the Court will typically order an investigation of the family before making a determination. An ACS case can be extremely invasive, often lasting longer than the criminal case itself and effectively punishing people for trying to see their children.

Q. CAN A HOUSING COURT MODIFY A CRIMINAL COURT TOP?

Housing court does not have jurisdiction over, nor any procedure for, modifying any other court's TOPs. Thus, even if a Criminal Court judge makes a TOP modifiable in housing court, a Housing Court judge will not modify it.