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DOMESTIC VIOLENCE ISSUES

A PRIMER

By

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WHAT DOES A DOMESTIC VIOLENCE CHARGE INVOLVE?

In Ohio, domestic violence (DV) is the same as assault, except for the relationship of the parties. For a DV charge, the parties must have a familial relationship or live in a relationship that resembles marriage. DV involves physically striking another, threatening to strike another, abusing a child, or stalking another.

When DV is charged as a criminal offense, it is a third degree misdemeanor if a threat, and a first degree misdemeanor if any of the other types. Multiple offenses carry higher penalties.

A DV allegation can also be filed as a civil complaint. This is filed in Domestic Relations Court. For the allegations to be sustained, it requires proof of the same things that a criminal DV does. However, a criminal conviction requires a higher standard of proof than a civil DV finding.

WHAT IS THE PROCESS OF A DOMESTIC VIOLENCE CHARGE?

A criminal DV charge begins with a complaint filed by a police officer or by an officer giving a referral to the person wishing to bring the charge. Once a charge is filed, a warrant is issued for the arrest of the person accused (the defendant). The court will generally not allow someone charged with DV to be released on bond the first night of his/her arrest.

A defendant is usually ordered to stay away from the person who has accused him while the case is pending. This is done in the form of a temporary protection order (TPO). This order prohibits the defendant from being within 500 feet of the accuser, from terminating any utilities, and orders the defendant out of the house, if the parties share one together. The defendant cannot violate the TPO, even with the accuser's permission, without being subject to a new criminal charge.

A defendant is entitled to the same rights as anyone else accused of a crime. These are the right to an attorney, the right to a trial, by jury or a judge, and the right to not be convicted unless the allegation is proven beyond a reasonable doubt.

If convicted, the defendant faces up to 60 days in jail for a third degree misdemeanor, up to 180 days in jail for a first degree misdemeanor, and, if multiple convictions have occurred, up to a third degree felony. Jail time may be mandatory if the victim was pregnant. The defendant may be placed on probation. In that event, he will likely be ordered to attend the AMEND program, which educates people on dealing with conflict without resorting to violence.

The TPO generally continues in effect for as long as the person is on probation.

If the defendant is not convicted, the TPO is dismissed. However, that may not end the issue. The accuser could still file a Civil Domestic Violence petition.

Whether in conjunction with a criminal charge or on its own, a civil domestic violence petition begins with the accuser (petitioner) filing a complaint. The petitioner has an initial hearing with a magistrate, who decides whether the allegations are sufficient enough to warrant a temporary restraining order (here, called a Civil Protection Order (CPO)). If such order is issued, it also involves prohibiting the accused (respondent) from going within 500 feet of the petitioner, from terminating utilities, and forces the respondent out of the house. If the parties have children, they may also be included in the CPO.

If the initial petition is granted, the case is set for a full hearing, where the respondent has the opportunity to refute the allegations. Even if the petition is not granted, the case is still set for a full hearing. However, in that event, no initial restraining order is issued.

If, after the full hearing, the petition is granted, the restraining order can remain the same as it was initially issued or it can be modified as agreed by the parties or as ordered by the court. Often, if there are children involved, the court will issue a temporary custody and support order. If the children are not included in the restraining order, so the respondent is not prohibited from seeing them, arrangements may be made for a temporary parenting schedule.

If one of the parties files for divorce during the pendency of the civil domestic violence case, the court will defer decisions on custody, support, and parenting time to the court handling the divorce. If the DV case is completed before a divorce is filed, the divorce court will generally follow the custody and parenting time set by the DV court.

If a civil DV is filed, there is another option to a trial. The parties are permitted to enter into a consent agreement. This is where the respondent agrees to be subject to a restraining order. In exchange, the court makes no finding of domestic violence against the respondent.

WHAT ARE THE LONG TERM CONSEQUENCES OF A DOMESTIC VIOLENCE FINDING?

As discussed above, in the criminal setting, a domestic violence conviction has the consequence of increasing the degree of offense if a new DV charge is filed, and the accused is convicted again. In addition, a conviction for domestic violence cannot be expunged from the defendant's record.

In cases involving parenting of children, a domestic violence criminal conviction can prohibit a parent from obtaining shared parenting. For more information on Shared Parenting, go to the reports section of our website and download the Custody report.

WHAT SHOULD I DO IF MY SPOUSE COMMITS A DV ACT?

The first step is to keep yourself and your children safe. This may be by calling the police or by leaving the premises first and then calling the police. If the police are called, they will probably arrest someone. If your spouse makes the same allegations against you, the police will have to decide who they believe is at fault to charge.

If you are unable to report the incident right away, you should report it as soon as possible to the police. In this instance, they are unlikely to make an arrest. However, they may give you a referral to file a criminal charge yourself.

Whether you file a criminal charge or not, you can go to the domestic relations court in the county where you live to file a civil domestic violence petition as discussed above. If granted, your spouse will be served with the CPO by the police, who will inform him that he cannot remain at the marital residence until the case is resolved.

WHAT DO I DO IF I AM CONCERNED MY SPOUSE MAY FALSELY ACCUSE ME OF DOMESTIC VIOLENCE?

Unfortunately, sometimes a spouse will hear about the consequences of a domestic violence charge and try to use it to get their spouse out of the house. If you believe this could occur, you should protect yourself by 1) not being alone with your spouse, 2) not allowing arguments to escalate, 3) carrying a voice activated tape recorder to record any arguments or statements by your spouse that would demonstrate you were not threatening or violent.

DO I NEED A LAWYER FOR A DV CASE?

For any criminal case, you definitely need a lawyer, particularly for a charge with the consequences of a DV. On the civil side, if you are the petitioner, and you want to be sure you do everything correct to get an order, you should obtain advice from an attorney before filing. If you are accused in a civil DV, you should definitely consult an attorney before having the full hearing.

HOW CAN I RECEIVE MORE INFORMATION?

We hope you have found this report useful. As you can see, there are a number of issues

to examine when there is domestic violence. We strive to obtain full information from you to examine all factors that may affect your situation, and allow you to decide how to proceed. If you would like to discuss your situation, please call the office at **513-241-4029** or email us at **cathy.cook@cathycooklaw.com**. We offer a free phone consultation. For a more in-depth analysis of your situation, we offer an in office case audit.

LEGAL NOTICE

The above is an overview of domestic violence issues in the state of Ohio. It is not legal advice, and does not create an attorney-client relationship with Cathy R. Cook, Attorneys at Law. Your own situation should be reviewed and analyzed by an attorney.