

# *Equal Justice Foundation*

## **Domestic Violence – The Facts**

### **IF YOU ARE CHARGED WITH DOMESTIC VIOLENCE (DV)**

- **You are presumed guilty until you prove your innocence and due process is nonexistent.**  
Don't talk to the police or prosecutor. You can and will only incriminate yourself by trying to explain what happened!
- **Arrest is mandatory and will be made without a warrant. Your residence will also be searched.**
- **No matter what plea bargain you are offered plead innocent and demand a jury trial!**  
In DV cases the DA's are out to win. Your guilt or innocence is of no consequence to them.  
Prosecutors often tack on additional charges after your arrest, especially if they can get felony charges added. That gives them a much stronger position when trying to coerce you into taking a plea bargain. Tacking on additional charges against you may also increase the bail you must post. A **plea bargain is a criminal conviction and will haunt you for life.**
- The District Attorney **cannot** dismiss a domestic violence case or plea bargain it to anything that does not involve domestic violence C.R.S. § 18-6-801 (3) and DV is an add-on charge to any crime.  
The other party cannot get the charges against you dropped either but can easily further incriminate you. **It is the State vs. you!**
- At the initial hearing the court may require a bond or release you on your own recognizance. If you previously posted a bond and are later released on your own recognizance, ask to have the bond lifted.
- You will be issued a **mandatory protection order** that you must sign and acknowledge in order to be released from jail. The protection order will include the following conditions:
  - (a) An **order to vacate or stay away from the home of the victim** and to stay away from any other location where the victim is likely to be found. Commonly this means you can't go back to your own home or job location even if she doesn't live or work there, have any claim to be on your property, or to see or talk to your kids. **Due process is nonexistent;**
  - (b) An **order to refrain from contact, or direct or indirect communication with the victim**, i.e., you or your friends and relatives can't contact any of her or your friends to obtain witnesses on your behalf; **No contact means no contact!**
  - (c) An **order prohibiting possession or control of firearms or other weapons** {a Federal felony under 18 U.S.C. § 922(g)(8 and 9)} and if you have military or police training you are classed as a "trained killer." You have only 48 hours to comply;
  - (d) An **order prohibiting possession or consumption of alcohol or controlled substances;** and
  - (e) Any other order the court deems appropriate to protect the safety of the alleged victim. For example, as a condition of your release on bail you may be required to wear an electronic tracking bracelet until your trial.

*The mandatory protection order only works one way.* You are restrained from contacting the other party but they can contact you. However, you can't reply, telephone, email, send a card, or speak to them or your kids when they do, or you go back to jail.

- **No determination of your guilt is required before imposing such punishments.**
- **Seek help immediately, plead innocent, get a copy of the evidence against you, demand a jury trial!**  
A guilty or no contest plea at this time, or failure to appear, is a **lifetime** sentence regardless of anything the prosecutor may tell you about a "*deferred sentence*" or *sealing your record* (They may legally lie).  
*If you have PTSD, TBI, or any other disability get an ADA advocate to help you immediately.*
- **A trial to a judge, or bench trial is simply a long, slow way of pleading guilty.**
- **The only way you can clear your record is to demand a jury trial.**

The prosecutor will do everything possible, including lies, intimidation, withholding discovery, and often torture (hypothermia and sleep deprivation are common methods) to get you to plead guilty and accept a plea bargain.

In 2010 in Colorado there were 69,700 misdemeanor court cases, 18,400 were for DV, but only 820 jury trials. There were 37,000 felony cases but only 1,059 jury trials, many of which were for homicides. Thus, the DA needs to get a plea bargain.

If you wisely call the prosecutor's bluff and insist on a jury trial the district attorney typically asks the judge to dismiss the case the morning of the trial. Usually the "*victim*" or the person who called the cops simply doesn't show up and without a witness the case must be dismissed. See U.S. Supreme Court case Crawford vs. Washington 541 U.S. 36 (2004).

- **Get a competent criminal defense attorney familiar with domestic violence and jury trials!**  
**If ever in your life you need a lawyer, now is the time.** If you have not been able to obtain an attorney while in jail, and the court does not, or will not, assign a public defender, you must obtain your own (*see Chapter 1 of dvmen.org*).

But no attorney, however competent, can defend you without knowing what happened when, where, and to whom. You must make an accurate and comprehensive timeline of events and list contact information for all involved.

- **You will be given a hearing or arraignment** before a magistrate or judge and formally charged.  
Don't make any statement at the hearing other than "**Not guilty**" and a demand for a jury trial. Colorado is required to give you a trial within six months after entering a not guilty plea. **Don't accept a continuation.** Wear coat and tie to court!  
If(?) you have been released on bail before the hearing, you **must** show up in court or you will lose all future rights and surrender your bail bond. If you have PTSD or TBI get someone to make sure you show up for court dates!  
With a competent defense attorney you may be able to have terms of the protection order lifted or modified at the hearing, e.g., no alcohol provision, or no contact with your children order, depending on circumstances and what the "*victim*" wants.

# Domestic Violence – The Facts

## WHAT HAPPENS IF YOU ARE CONVICTED, PLEAD GUILTY, PLEA BARGAIN, OR ACCEPT A DEFERRED SENTENCE ON A DOMESTIC VIOLENCE CHARGE

- **The lifetime cost of pleading guilty is infinite and you cannot appeal. Demand a jury trial!**  
Unless your guilt is clear (not likely in a “he said/she said” case), any criminal defense attorney who suggests you accept a plea bargain or deferred sentence should be dismissed instantly as incompetent. Corrupt lawyers love plea bargains because they get the same fees but don’t have to go to the labor of preparing for trial.
- **A plea bargain is a conviction! A conviction usually means the loss of your job, home, and family.**  
If you accept a plea bargain you surrender all rights to an appeal. Your conviction shows on the *CourtCourts.com* web site and other databases. As employers check these, getting a new job will be difficult or impossible in your current field.  
You will also lose your professional license(s) and any financial bond. Thus, doctors, teachers, and others who require professional licenses or financial bonds cannot continue to practice their trade or profession.  
Under DoD Directive 5220.6 a DV conviction will usually deny you a security clearance.
- **The loss of your Second Amendment rights is for life!**  
It is a felony violation of state and **Federal** law, 18 USC § 922(g)(8 and 9), to purchase, acquire, or be in possession of firearms, ammunition, or other dangerous weapons, *with a mandatory minimum 5 years in prison if convicted of DV*.  
A domestic violence conviction will mean the certain loss of your job if you work in a profession, e.g., police, fire, military, construction, trucking, mining, etc. that requires use of firearms, explosives, or other dangerous agents.
- **You cannot serve in the military and you may lose any military pension you have.**  
If you are currently in the military you will be involuntarily discharged or not allowed to reenlist. You may also have to repay any reenlistment bonuses.

- The Uniformed Services Former Spouses Protection Act (PL 97-252, 1982) “allows” state divorce courts to “divide” as marital property any “pension” earned during the concomitant marriage/service period, regardless of fault, need, or independent wealth. It also penalizes military men for domestic violence inflicted on a civilian spouse or dependents by revoking his/her retirement benefits and providing them to his/her victims.
- On a first offense for misdemeanor assault the typical sentence is two years probation; second offense up to six months in county jail plus probation; third DV offense is a felony with 6 to 18 months or more in prison. Felony assaults have longer sentences and usually result in at least 6 months in jail though several years in prison are more likely with a felony or any prior convictions.
  - Commonly there will be a fine as well as court costs.
  - If convicted you will have to take, and pay for DV treatment for an indeterminate period. Psychiatric care, anger management, substance abuse treatment, etc., may and probably will be imposed as well.

- The mandated DV and other court-ordered counseling will cost you \$1,000-\$5,000 or more on top of other fines and fees, and require several hours every week for at least six months though a year is more common. Attendance is mandatory.
- The mandatory protection order remains in effect until your sentence is completed. If you violate the protection order you will almost certainly go to jail for 3 to 6 months.
  - Most marriages end in divorce in these cases and child protective services (DHS/CPS) will be involved.

**Primary custody of any children will pass by law to the mother if you are convicted.** She will also be awarded child support and possibly maintenance (alimony). Because of these advantages many women use false allegations of domestic violence to gain custody, hide adultery, or prevent men from getting DNA paternity tests from her children.

After a DV conviction fathers are commonly only able to see the children during supervised visitation periods for one to two years and pay from \$40 to \$60 per hour of supervised visitation.

- Even without children she will likely get the house, the car, bank accounts, and anything else she wants.
- You may never be eligible for welfare or public housing.  
Renting, leasing, or buying a house will be difficult or impossible under current law with a DV conviction or plea bargain.
  - You will be unable to obtain a student loan and may lose military benefits.
  - You probably cannot ever hold a public office or get a government job.
  - You cannot get a hunting license.
  - Your voting rights may be lost.
  - If you are not a United States citizen you will be deported and cannot reenter the country.

The law requiring deportation also applies to a wide range of crimes ranging from manslaughter to misdemeanor drunken driving, as well as domestic violence.

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*Web sites: [www.ejfi.org](http://www.ejfi.org) and [www.domen.org](http://www.domen.org)*

*Email: [comments@ejfi.org](mailto:comments@ejfi.org)*

*If you don't know where else to turn you can call the Domestic Abuse Helpline for Men and Women at (888) 743-5754 or by email at [help@dabmw.org](mailto:help@dabmw.org). Volunteers are needed.*