

In Ohio the legal definition of domestic violence is that almost anything an abuser does to threaten or hurt you or your family is domestic violence. This includes everything from hitting or slapping you or threatening you or your children. If you are experiencing domestic violence you can get a protective order under the domestic violence laws against only certain people such as;

- 1) Spouse or ex-spouse
- 2) Parent or step-parent
- 3) Child or step-child
- 4) Anyone who lives in your home or has lived in your home in the last five years.
- 5) Other people related to you by blood or marriage
- 6) Anyone you have a child with, even if you don't live together

However, even if you are not covered by Ohio Domestic Violence Laws you still may be able to get a protective order if someone has been convicted of stalking or harassing you.

Before going to court make sure to try and get any evidence that you have to prove your case. This evidence can be any of the following;

- 1) Police reports
- 2) Medical reports
- 3) Pictures of your injuries
- 4) Tapes of calls to 911
- 5) Anything else to convince the judge that you suffer from domestic violence

Remember the more evidence you have, the better your chances are.

### **What are the criminal penalties for a conviction of domestic violence?**

A first conviction of domestic violence for an act of physical violence or attempted physical violence is a misdemeanor of the first degree, punishable by up to six months in jail and/or a \$1,000 fine.

A second conviction of domestic violence for an act of physical violence or attempted physical violence is a felony of the fifth degree, punishable by a \$2,500 fine and a definite period of incarceration of six, seven, eight, nine, ten, eleven, or twelve months.

As a result of [Senate Bill 50](#), which became law on January 8, 2004, a third conviction of domestic violence for an act of physical violence or attempted physical violence is a felony of the third degree, punishable up to five (5) years in prison and/or a fine of \$10,000.

A first conviction of domestic violence for threatening to use physical force against a family household member is a misdemeanor of the fourth degree punishable by up to 30 days in jail and/or a \$250 fine.

A second conviction of domestic violence for threatening to use physical force against a family or household member is a misdemeanor of the second degree, punishable by up to 60 days in

jail and/or a \$500 fine.

As a result of [Senate Bill 50](#), effective January 8, 2004, a third or subsequent conviction for threatening to use physical force against a family or household member is a misdemeanor of the first degree, punishable by up to six (6) months in jail and/or a felony of the third degree, punishable by up to five years in prison and/or a \$ 1000 fine.

### **Can the police arrest both parties—the man and the woman—for domestic violence?**

Yes, but Ohio law strongly discourages that practice.

Under Ohio's preferred arrest law, in cases where law enforcement officers determine that both the man and the woman committed domestic violence, the officer should determine which party is the "primary physical aggressor." [RC 2935.03\(B\)\(3\)\(b\)](#).

Law enforcement officers are not prohibited from arresting both persons who engage in domestic violence against each other, but in most cases the officer should only arrest the primary physical aggressor. In determining which person is the primary physical aggressor, the officer should consider the following factors:

- Any history of domestic violence or any other violence acts by either person involved in the alleged incident that the officer reasonably can ascertain;
- Whether one of the persons was acting in self defense;
- Each person's fear of physical harm, if any, resulting from the other person's threatened use of force or actual use or history of use of force against any person, and the reasonableness of that fear; and
- The comparative severity of any injuries suffered by the persons involved in the incident.

The police officer or sheriff's deputy is expected to weigh and balance these four factors in determining which person involved in the domestic violence incident is the primary physical aggressor.

No one of the factors is determinative. It is possible that one of the factors might suggest that one person is the primary physical aggressor while one or more of the other factors suggests that the other person is the primary physical aggressor.

For example, the primary physical aggressor may have less severe injuries than the other person because the other person was acting in self-defense because of a reasonable fear that her abuser would inflict greater injuries upon her if she did not act in self-defense. In that case, the officer may determine that the person with the less severe injuries is the primary physical aggressor.

### **What are the differences between a domestic violence criminal protection order and a domestic**

### **violence**

#### **civil protection order?**

A domestic violence criminal protection order, called a "temporary protection order (TPO)" provides more limited relief and remains in effect for a much shorter period of time.

Specifically, a TPO may order the abuser not to commit any further acts of abuse and to stay away from the victim, her residence, her business, her place of employment or her school. The TPO may also contain other conditions specifically directed toward assuring the safety and protection of the victim.

But a TPO cannot contain any orders for child support, spousal support, awarding use of an automobile or personal property, awarding child custody or visitation, or directing the abuser to obtain counseling.

Equally important, the criminal protection order only remains in effect until the disposition of the criminal case, i.e., the abuser is acquitted of the underlying criminal charges or is convicted and sentenced for domestic violence. As a result, a TPO usually remains in effect for only a few months.

By contrast, a civil protection order (CPO) may be valid and enforceable for up to five years after the issuance of the CPO.

Moreover, a CPO may award temporary child support or spousal support, temporary child custody and visitation, including supervised visitation, award use and possession of an automobile or other personal property of the parties, or require the abuser to obtain counseling.

If a party obtains a TPO and later obtains a CPO, the CPO is controlling and supersedes the criminal TPO.

#### **What form do I need to complete to get a civil protection order?**

If you or a family member are being physically abused or threatened with harm by a family or household member (person living in your home, even if not related to you by marriage or blood) you can apply for a Domestic Violence Civil Protection Order.

#### **What is the procedure for obtaining a criminal temporary domestic violence protection order?**

The issuance of a criminal temporary protection order (TPO) is tied to a criminal prosecution for domestic violence.

Once a domestic violence prosecution or prosecution for any offense of violence against a family or household member is initiated by the filing of a complaint, the victim, a family or household member of the victim, or, in an emergency, an arresting officer on the victim's behalf, may file a motion for a temporary protection order.

The clerk of the municipal court is required to provide motion forms to victims and police officers. Once the motion is completed and filed, the court must hold a hearing within 24 hours.

If the victim wants to obtain an ex parte (emergency) temporary protection order, the victim

may ask the judge to immediately grant such an order.

If the court issues an emergency ex parte TPO, the full hearing on the motion for a TPO must be held on the next business day on which the court is open. The full hearing on the TPO will be held within 24 hours after the motion for a TPO was filed.

Normally, the victim must appear at the TPO hearing. However, if the victim has been hospitalized or otherwise incapacitated by her injuries, another person with knowledge of the facts of the domestic violence may appear instead of the victim and present information to the court concerning the domestic violence. [See R.C. 2919.26.](#)

A victim may request a civil protection order (CPO) by filing a petition with the domestic relations court or domestic relations division of the court of common pleas. The clerk of court must provide forms to victims which they can then complete and file with the court.

A hearing will normally be scheduled within seven to ten days after the filing of the petition. In addition, If the victim (petitioner) wants to obtain an ex parte (emergency) CPO that will be in effect until the time of the hearing, she may do so and the court will hold a brief and informal hearing at which he will take her testimony and then (in most cases) issue the emergency ex parte CPO.

The full hearing on the petition for a CPO must then be held within seven (7) to ten (10) days after the issuance of the emergency ex parte civil protection order. [See R.C. 3113.31.](#) The full hearing on the TPO motion or the CPO petition will afford an opportunity for both the victim and her alleged abuser to present testimony and evidence to the court proving the occurrence or non-occurrence of the alleged domestic violence.

If the victim does not appear at the hearing, the court will usually dismiss the victim's motion for a TPO or petition for a CPO.

### **How long does a domestic violence criminal protection order remain in effect?**

The criminal temporary protection order (TPO) remains in effect only until the disposition of the criminal case. Therefore, once the abuser is convicted and sentenced, the criminal case is over and the TPO automatically expires. [See R.C. 2919.26\(E\).](#)

### **Can a court issue a so-called “mutual protection order”—an order against both the alleged abuser and the person requesting the protection order—and if so, under what circumstances can a court issue such an order?**

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No, unless certain requirements are met. In order for the court to issue a domestic violence protection order against both parties in the same case, the alleged abuser must file a separate petition or cross-petition for a domestic violence protection order at least 48 hours before the full hearing, and the alleged abuser must present evidence at the full hearing sufficient to convince the judge that his domestic violence victim also committed domestic violence against him.

Being accused of domestic violence can be one of the toughest accusations you will ever face. Because of the relationships involved and the complexity of the laws, domestic violence cases can be wrought with emotion and stress.

And Ohio criminal courts are extremely tough on domestic violence related charges. They are very unlikely to cut you any slack or give you any benefit of the doubt. To defend yourself, you are going to need an aggressive defense lawyer to fight back and protect you and your legal rights in a case like this.

We know what you are going through because we have represented clients in similar situations. We understand the heartache and stress you might be feeling and want to help.

When it feels like no one in the system has your best interests in mind, let us reassure you. Domestic violence law is set up to protect the victim. The courts want to know that no one will be hurt and because of this the system can seem overbearing and unfair for someone charged with the offense.

Many minor disagreements, even when absolutely no one is hurt, can result in a domestic assault arrest. The police are taught to arrest first and sort out the facts later.

So that's what you need... someone to sort of the facts and clear your name. Please contact our Ohio criminal defense attorneys today to find out what we can do to help.

## What is Domestic Violence under Ohio Law?

When talking about domestic violence it is important to note that the offense does not have to occur between spouses. The term “**domestic**” applies to any of the following relationships:

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More than likely, you were immediately arrested on the day of the incident. If you are lucky enough to be granted bail, a temporary restraining order will be put in place to ensure you and the alleged victim do not have contact pending future court dates.

What kind of domestic violence charge and penalties you will be facing and the subsequent sentence depend on what occurred the day of the incident.

**If you are accused of...**

- Attempting to cause or causing bodily harm you will face **Class I misdemeanor** charges which carry a potential sentence of up to 6 months in jail and fines up to \$1,000.
- Threatening or causing a family or household member to believe that physical harm will be caused, you will face **Class IV misdemeanor** charges which carry a possible penalty of up to 30 days in jail and \$250 in fines.

Ref:

[ORC 2919.25](#)

If the incident that led to your arrest resulted in more serious damage to the alleged victim you could be facing additional **assault charges**. Depending on the extent of the injuries, assault carries up to 8 years in prison and fines into the several thousands.

In addition to jail time and fines, the judge will likely order you to an anger management class or counseling. If appropriate and drug and alcohol evaluation may also be ordered.

If convicted, the protection order issued at the time of the incident will be extended to a more long term basis. These protection orders can dictate your location relative to the victim as well as arrange child support and custody arrangements.

Domestic violence charges are a very serious matter and not something you want to face alone. Putting your future in someone else's hands is quite frightening and we understand you want to be sure your defense lawyer is doing everything possible to protect and defend you.

But there are options, so don't give up hope. We may be able to argue for dropping criminal

charges in exchange for counseling or anger management classes. Getting the risk of a criminal conviction off the table is usually the first priority in a domestic violence defense.

We want to help *you* with *your* case but need to speak to you first. Call to discuss the specifics of your case today.

### Contact the Law Office of Michael J. Davis

To talk to Michael J. Davis about your legal concerns, please contact us by calling 513-604-8391 or emailing us at [davislaw01@gmail.com](mailto:davislaw01@gmail.com)

Michael J. Davis is located in Mason, Ohio, and serves clients throughout Ohio, including Lebanon, Maineville, Mason, Morrow, Springboro, South Lebanon, West Chester, Warren County, Butler County, Hamilton County, Clermont County and Clinton County, Ohio.